# TRANSCRIPT OF RECORD

## SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 208

THE UNITED STATES OF AMERICA

vs.

JOSE CANDELARIA ET AL.

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

FILED NOVEMBER 19, 1926

(30699)

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56275—25

1 The United States Circuit Court of Appeals, Eighth Circuit

UNITED STATES OF AMERICA, APPELLANT
*v.*
JOSE CANDELARIA ET AL., APPELLEES
No. 6594

Appeal from the District Court of the United States for the District of New Mexico

*Statement of facts*

The United States Circuit Court of Appeals for the Eighth Circuit hereby certifies that a record on an appeal now pending before it discloses the following:

The United States District Court for the District of New Mexico entered a decree upon the pleadings in an action brought by the United States, as guardian of the Indians of the Pueblo of Laguna, against Jose Candelaria and other claimants to certain lands in that State.

The bill of complaint contained the following allegations:

The suit was brought by authority of the Attorney General of the United States, at the request of the Secretary of the Interior, in furtherance of the Indian policy of the Government, which is functioning as the guardian of the Pueblo of Laguna, a tribe of Pueblo Indians, wards of the United States, incompetent to manage their own affairs, and from a period prior to the year A. D. 1769 the owner of, residing on, cultivating and using for agricultural and pastoral purposes a grant or tract of land situate in the county of Valencia, State of New Mexico, known as the "Paguate purchase," confirmed to the Pueblo of Laguna by act of Congress, March 3, 1869, and patented by the United States of America pursuant to said confirmation, September 22, 1884. The action of the Government officials in bringing the suit was in the general
2 line of official duty in defense of and seeking a judicial determination of the title of the Pueblo of Laguna to the tract or grant of land set out and described in the bill of complaint.

The tract of land in question was originally granted by the Government of Spain to certain individuals whose heirs and assigns, prior to A. D. 1769, sold and conveyed the same to the pueblo of Laguna by deed, in the execution of which the Spanish authorities participated, and which conveyance was subsequently, by deed, June 1, A. D. 1820, executed by a Spanish official known as the "protector-general of the Indians," recognized and confirmed as a conveyance of the said tract to the said pueblo, and again, on August 26, 1826, the last-mentioned deed was approved by the then governor of the Province of New Mexico.

At the time of the acquisition of New Mexico by the United States of America, February 7, 1848, the said pueblo of Laguna was in the possession, and claiming absolute ownership and title under

the foregoing conveyances, of the said tract of land known as the "Paguate purchase," and under the provisions of the treaty of Guadalupe Hidalgo, by virtue of which New Mexico became a portion of the territory embraced within the limits of the United States of America, the said pueblo of Laguna, and the Indians thereof, became and were entitled to its protection and all the benefits accruing to them thereunder.

Within the areas contained in the said "Paguate purchase" there are certain tracts known locally as the Valle Lindero, Piedra Lumbre, and Chupadero, upon which some of the Indians of the pueblo, individually, have cultivated lands for many years, and on which said locally known tracts some of the defendants were permitted by the Indians of said pueblo to cultivate certain areas without interference or molestation. But during the years 1906, 1907, 1908, and 1909 these defendants commenced the fencing of other lands in said locally known tracts, belonging to the said pueblo, by
3 which the Indians were excluded from lands which they had cultivated and irrigated for many years, and by threats, trespasses, and in other ways endeavored to expel the Indians from the choice lands lying in said locally known places.

The pueblo of Laguna was established by the Spaniards in the year 1698, under royal authority and pursuant to the rules and regulations of the Crown of Spain made and provided for the establishment of Indian pueblos in New Spain, of which the province of New Mexico was a part, the Indians constituting said pueblo being made up of the members of several tribes who had abandoned their habitat in other pueblo villages in New Mexico during the wars of the reconquest of the province of New Mexico in the years 1692–1696; during all the years subsequent thereto the Indians of the pueblo of Laguna have lived in villages located at various places upon their lands, among which is the village of Paguate, which is situate within the lands constituting the said "Paguate purchase" and located about half a mile south of the said locally known tract of Valle Lindero.

The defendants live and have their homes at villages located a short distance north of the north boundary of the "Paguate purchase," known as Cebolleta and Moquino; they and their predecessors "squatted" upon divers and sundry small tracts in the said Valle Lindero, Piedra Lumbra, and Chupadero, and are now claiming all of said tracts adverse to the title of the said pueblo of Laguna, and have also attempted to monopolize, to the exclusion of the Indians, large and valuable tracts of land suitable for grazing purposes within the exterior boundaries of the said "Paguate purchase," and the said defendants are claiming title to these tracts within the "Paguate purchase" under a grant, deed, or some other instrument in writing, purporting to convey the title to the particular lands so claimed by them.

The defendants in their answer denied the wardship of appellant. They admitted that the pueblo of Laguna was the owner of the

tract of land known as the "Paguate purchase"; that such ownership, had existed since the passage of the act of Congress of March 3, 1869; that the northern boundary of said "Paguate
4 purchase" was a place known as the Mesa del Gabilan; admitting also the issue by the United States of America of a a patent to said pueblo, but declaring that the description in said patent included land far to the north of the said Mesa del Gabilan. Defendants further answering declared that the Indian claim to such land north of the said Mesa del Gabilan had been, prior to the filing of this suit, adjudicated adversely to the pueblo of Laguna by the District Court of the county of Valencia, in the Territory of New Mexico, in a suit instituted by said pueblo in February. 1910, for the purpose of quieting the Indian title to the tract of land in the bill of complaint described, and in which suit many of the defendants herein had been named as defendants; and that by said adjudication the territorial court had found as matter of fact that the said "Mesa del Gabilan lies to a considerable distance southeast of the Indian town called Paguate, and that the junction of the Canada del Pedro Padilla, which is the other call for said southeast boundary for said Cebolleta grant, lies directly east from said Mesa del Gabilan, the line from said mesa and the point of junction of the said Canadas being the true boundary line of said Cebolleta grant, the said true boundary line and the surveyed southeast boundary line of the Cebolleta grant being a part of the land described and set forth in the complaint, and that "the defendants and their ancestors and predecessors in title had been, from a time beyond the memory of any living man, in the open, notorious, and exclusive possession of portions of the land lying between said true boundary line and said surveyed line of the Cebolleta grant," which is set up in the case at bar as the northeast boundary of the land claimed by said pueblo; and that by the survey of the "Cebolleta grant," which is set up in the case at bar as the northeast boundary of the land claimed by said pueblo; and that by the survey of the Cebolleta grant the southern line of said grant was established far to the north of its actual location on the earth's surface; and that the defendants had such possession under a claim of owner-
5 ship of the land between said two lines under said Cebolleta grant, except that they had not interfered or undertaken to interfere with the Indians at or near the village of Paguate, and that their occupation and possession had been open and notorious, and that no claim by suit at law or in equity had ever been made by the Indians for said tract until said suit was begun; that in said suit so brought by the pueblo of Laguna in the territorial court it was adjudged that the said Pueblo was "not entitled to any relief against the defendants claiming under the Cebolleta grant," but that the conclusion was not to be allowed to interfere in any way with the Indians who before 1908 had been in possession of and cultivating lands north of the said true boundary line of the Cebolleta grant; and that, under the decree of said territorial District Court, it was

held that the said pueblo take nothing by its complaint and that the cause be dismissed.

In other words, it was held by the territorial district Court that a conflict existed between the southern boundary line of the Cebolleta grant as surveyed and the northern boundary line of the "Paguate purchase," constituting an overlap to which those claiming under the Cebolleta grant had the superior title.

Defendants also stated in their answer that, on March 17, 1916, the Pueblo of Laguna instituted another suit in the United States District Court for the District of New Mexico, for the purpose of quieting its title to the same tract of land which was the subject of the suit in the District Court of Valencia County, in the Territory of New Mexico, which later suit, on motion of the defendants, on January 29, 1920, had been dismissed for the reason that the District Court of Valencia County, New Mexico, had jurisdiction of the case in that court, and that the matters presented by the complaint in the District Court for the United States were res judicata and that there was no Federal question in the case.

6 The replication alleged that the judgment in the State suit had been made and entered subsequent to statehood; that the United States of America, as guardian of the Pueblo of Laguna and the Indians thereof, was not a party to said suit so brought by the Pueblo of Laguna in the District Court for Valencia County, Territory of New Mexico, nor in the suit brought by the said pueblo of Laguna in the United States District Court for the District of New Mexico, and had never authorized the bringing of said suits by said pueblo of Laguna, and the attorney appearing for said pueblo in said suits did not, at the time of the bringing thereof, nor at any time thereafter, represent the United States of America, and that the plaintiff is not bound by any judgment or decree of said courts, respectively, entered in said causes.

By its order and decree dismissing the bill of complaint in the case at bar, the District Court for the District of New Mexico found as matter of law that the pueblo of Laguna was a corporation by virtue of a statute of the Territory of New Mexico and capable of suing in respect of its lands, and that this territorial statute was not inconsistent with the guardianship of the United States over the Indians of the pueblo of Laguna, and that the District Court of Valencia County, New Mexico, was a court of general, unlimited jurisdiction, with jurisdiction of the subject matter and of the parties in the suit instituted in that court by the pueblo in 1910, and that its decree therein was a final adjudication of the matters presented in that suit and binding upon the parties thereto and, furthermore, was a complete adjudication of the matters presented by the bill of complaint in the present suit and operating as a bar to the prosecution thereof, and that the dismissal of the suit instituted by the pueblo on the 17th of March, 1916, in the United States Dis-

trict Court for the District of New Mexico, was a further adjudication of the matters presented by the bill of complaint and was also a bar to the prosecution of the present case.

7 It is further certified that the following questions of law arise from the record and are presented, the decision of which is indispensable to a determination of the case. To the end that this court may properly discharge its duty it desires the instruction of the Supreme Court upon them:

*Questions certified*

Question I. Are Pueblo Indians in New Mexico in such status of tutelage as to their lands in that State that the United States, as such guardian, is not barred either by a judgment in a suit involving title to such lands begun in the territorial court and passing to judgment after statehood or by a judgment in a similar action in the United States District Court for the District of New Mexico, where, in each of said actions, the United States was not a party nor was the attorney representing such Indians therein authorized so to do by the United States?

Question II. Did the State court of New Mexico have jurisdiction to enter a judgment which would be res judicata as to the United States, in an action between Pueblo Indians and opposed claimants concerning title to land, where the result of that judgment would be to disregard a survey made by the United States of a Spanish or Mexican grant pursuant to an act of Congress confirming such grant to said Pueblo Indians?

KIMBROUGH STONE,
*United States Circuit Judge.*
THOMAS C. MUNGER,
*United States District Judge.*
ANDREW MILLER,
*United States District Judge.*

Being the judges who sat in the Circuit Court of Appeals on the hearing of the case.

8 *Clerk's certificate*

In United States Circuit Court of Appeals, Eighth Circuit

I, E. E. Koch, clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing certificate in the case of United States of America, appellant, *vs.* Jose Candelaria et al., appellees, No. 6594, was duly filed and entered of record in my office by order of said court; and as directed by said court, the said certificate is by me transmitted to the Supreme Court of the United States for its action thereon.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the city of St. Louis, Missouri, this fourteenth day of November, A. D. 1924.

[SEAL.] E. E. KOCH,
*Clerk of the United States Circuit Court of Appeals,*
*for the Eighth Circuit.*

[Indorsed on cover: File No. 30699. United States Circuit Court of Appeals, Eighth Circuit. Term No. 208. The United States of America *vs.* Jose Candelaria, et al. (Certificate.) Filed November 19, 1924. File No. 30699.]

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# In the Supreme Court of the United States

OCTOBER TERM, 1925

No. 208

THE UNITED STATES OF AMERICA

*v.*

JOSE CANDELARIA ET AL.

*ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT*

## BRIEF FOR THE UNITED STATES

### JURISDICTION

This case comes to this Court upon a certificate of the Circuit Court of Appeals for the Eighth Circuit filed November 19, 1924, submitting two questions upon which that court desires instruction. The jurisdiction of this Court in such cases arises under Section 239 of the Judicial Code.

### STATEMENT OF THE CASE

The United States brought suit August 28, 1922, in the United States District Court for the District of New Mexico to quiet title in the Pueblo of Laguna to certain lands against the claims of

Candelaria and others, and to enjoin them from interfering with the use or possession of such lands.

The lands involved are known as the "Paguate Purchase," acquired by the Pueblo of Laguna, prior to 1769, by deed from the heirs and assigns of certain grantees of the Government of Spain. This conveyance was recognized and confirmed as a conveyance of the tract to the Pueblo by deed of June 1, 1820, executed by a Spanish official known as the "protector general of the Indians," and on August 26, 1826, this last deed was approved by the governor of the Province of New Mexico. The lands were thus held, claimed, and occupied by the Pueblo of Laguna at the time of the acquisition of this territory by the United States in 1848, and were confirmed to this Pueblo by Act of Congress of June 21, 1860, c. 167, 12 Stat. 71, § 3,[1] and patented pursuant to said confirmation by the United States on September 22, 1884.

Some of the defendants were permitted by the Pueblo to cultivate certain areas of the lands involved, but beginning in 1906 the defendants commenced fencing other tracts in this area belonging to the Pueblo, the result of which was the exclusion of the Indians of the Pueblo "from lands which they had cultivated and irrigated for many years." (R. 1–2.)

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[1] The bill of complaint and certificate erroneously state the confirmation to have been by Act of Congress of March 3, 1869, c. 152, 15 Stat. 342.

To its bill containing allegations in substance as above set forth, the defendants answered admitting the Pueblo's ownership of the "Paguate Purchase," but asserting that the patent issued to the Pueblo by the United States described land to the north of the *true* northern boundary of the grant as it had existed. It was further alleged that the claim of the Pueblo to these lands lying north of the so-called true boundary had been adjudicated adversely to it in a suit instituted by it in February, 1910, in the territorial court of New Mexico against many of the defendants in the case at bar, for the purpose of quieting title in the Pueblo to this same land; that in said suit the territorial court had found and determined that the defendants had possession under a grant called the "Cebolleta Grant" of portions of the lands lying within the lands patented to the Pueblo as the "Paguate Purchase" but that the *true* southern boundary of the Cebolleta grant embraced these lands and that the surveyed northern boundary of the "Paguate Purchase" was too far to the north of the true boundary, and conflicted with the Cebolleta grant. It was therefore adjudged by the territorial court that the Pueblo of Laguna "was not entitled to any relief against the defendants claiming under the Cebolleta grant" (R. 3), and a decree was entered dismissing the cause.

The defendants further set up an adjudication of the United States District Court for the Dis-

trict of New Mexico in a subsequent suit instituted March 17, 1916, by the Pueblo of Laguna for the purpose of quieting its title to the same lands, wherein the bill of complaint was dismissed upon motion of defendants for the reason, among others, that the matter presented thereby was *res judicata*. (R. 4.)

In neither of these suits was the United States a party, nor had it authorized said suits or participated therein. (R. 4.)

The District Court dismissed the Government's bill, finding (R. 4, 5):

> * * * as matter of law that the pueblo of Laguna was a corporation by virtue of a statute of the Territory of New Mexico and capable of suing in respect of its lands, and that this territorial statute was not inconsistent with the guardianship of the United States over the Indians of the pueblo of Laguna, and that the District Court of Valencia County, New Mexico, was a court of general, unlimited jurisdiction, with jurisdiction of the subject matter and of the parties in the suit instituted in that court by the pueblo in 1910, and that its decree therein was a final adjudication of the matters presented in that suit and binding upon the parties thereto and, furthermore, was a complete adjudication of the matters presented by the bill of complaint in the present suit and operating as a bar to the prosecution thereof, and that the dismissal of the suit instituted by the pueblo on the 17th of March, 1916, in the

United States District Court for the District of New Mexico, was a further adjudication of the matters presented by the bill of complaint and was also a bar to the prosecution of the present case.

An appeal was taken by the United States to the Circuit Court of Appeals for the Eighth Circuit, which has certified to this Court these two questions (R. 5):

> Question I. Are Pueblo Indians in New Mexico in such status of tutelage as to their lands in that State that the United States, as such guardian, is not barred either by a judgment in a suit involving title to such lands begun in the territorial court and passing to judgment after statehood or by a judgment in a similar action in the United States District Court for the District of New Mexico, where, in each of said actions, the United States was not a party nor was the attorney representing such Indians therein authorized so to do by the United States?
>
> Question II. Did the State court of New Mexico have jurisdiction to enter a judgment which would be res judicata as to the United States in an action between Pueblo Indians and opposed claimants concerning title to land, where the result of that judgment would be to disregard a survey made by the United States of a Spanish or Mexican grant pursuant to an act of Congress confirming such grant to said Pueblo Indians?

On the questions raised by the certificate, we submit the following

PROPOSITIONS

1. The United States possesses the power and authority to control the Pueblo Indians of New Mexico with respect to their lands.

2. In the instant case the United States is suing to vindicate its policy with respect to the Indians, and to discharge its obligations to them—a distinct governmental interest.

3. Since the United States was not a party to the previous suits brought by the Pueblo of Laguna, it can not be bound thereby, especially since the right which it seeks to vindicate is entirely distinct from the property rights of the Pueblo, the subject matter of the previous suits.

4. The answer to Question I disposes of Question II, unless the latter be considered independently of the former. In that event, we concede that the State court did have *jurisdiction* to enter the judgment specified, but do not concede it to have a binding effect as to the United States.

ARGUMENT

## I

### The United States possesses the power and authority to control the Pueblo Indians of New Mexico with respect to their lands

The status of the Pueblo Indians in New Mexico was so thoroughly considered by this Court

in *United States* v. *Sandoval*, 231 U. S. 28, that we consider it unnecessary to do more than to summarize what was said in that case on that point, namely, that the Pueblo people have been regarded and treated by the United States as requiring special consideration and protection, like other Indian communities, and public moneys have been expended in their civilization and instruction; agents and superintendents have been provided to guard their interests; and their lands were exempted from taxation (pp. 39, 40).

The basis of the guardianship and protection by the United States over the Pueblo Indians was thus stated (pp. 45, 46):

> Not only does the Constitution expressly authorize Congress to regulate commerce with the Indian tribes, but long continued legislative and executive usage and an unbroken current of judicial decisions have attributed to the United States as a superior and civilized nation the power and the duty of exercising a fostering care and protection over all dependent Indian communities within its borders, whether within its original territory or territory subsequently acquired, and whether within or without the limits of a State.

Of particular importance here is the holding of the court that the fact that the Pueblos have a fee simple title to their lands does not put them beyond the protection and fostering care of the

United States. On this point it was said in part (p. 48):

> It is true that the Indians of each pueblo do have such a title to all the lands connected therewith, excepting such as are occupied under executive orders, but it is a communal title, no individual owning any separate tract. In other words, the lands are public lands of the pueblo, and so the situation is essentially the same as it was with the Five Civilized Tribes, whose lands, although owned in fee under patents from the United States, were adjudged subject to the legislation of Congress enacted in the exercise of the Government's guardianship over those tribes and their affairs.

This holding was in entire harmony with a long line of decisions of this Court establishing and maintaining the proposition that with respect to their *tribal* lands and property the power of Congress over the Indians is plenary; the extent of its exercise is a political, not a judicial, question; citizenship of the Indians is not inconsistent with its exercise, and that it is for Congress and not the courts to determine when it shall cease. *Lone Wolf* v. *Hitchcock,* 187 U. S. 553, 565; *Tiger* v. *Western Investment Co.,* 221 U. S. 286, 310, 311; *Williams* v. *Johnson,* 239 U. S. 414, 420; *Hallowell* v. *Commons,* 239 U. S. 506, 509; *Winton* v. *Amos,* 255 U. S. 373, 392.

Evidence of the congressional attitude respecting the Pueblo Indians and their lands is contained

in the New Mexico Enabling Act of June 20, 1910, c. 310, 36 Stat. 557, where one of the irrevocable conditions exacted was Sec. 2, par. 2, p. 558:

> That the people inhabiting said proposed State do agree and declare that they forever disclaim all right and title to * * * all lands * * * owned or held by any Indian or Indian tribes the right or *title* to which shall have been acquired through or from the United States or any prior sovereignty, and that until the title of such Indian or Indian tribes shall have been extinguished *the same shall be and remain subject to the disposition and under the absolute jurisdiction and control of the Congress of the United States.* (Italics supplied.)

Following a provision that no State taxes should be imposed upon lands or property of the United States, there was this qualification:

> * * * but nothing herein, * * * shall preclude the said State from taxing, as other lands and other property are taxed, any lands and other property outside of an Indian reservation owned or held by any Indian, save and except such lands as have been granted or acquired as aforesaid or as may be granted or confirmed to any Indian or Indians under any Act of Congress, but said ordinance shall provide that all such lands shall be exempt from taxation by said State so long and to such extent as Congress has prescribed or may hereafter prescribe.

These provisions by their very terms include Pueblo lands, and that Congress had the Pueblo Indians in mind is shown by the first paragraph of this same Section 2, wherein there was a condition for the prohibition of the "introduction of liquors into Indian country, which term shall also include all lands now owned or occupied by the Pueblo Indians of New Mexico." This last-mentioned prohibition was particularly considered in the *Sandoval* case.

A very pertinent recent further evidence of the attitude of Congress is the Act of June 7, 1924, c. 331, 43 Stat. 636, entitled "An Act to quiet the title to lands within Pueblo Indian land grants, and for other purposes." (Appendix A.) That Act provides (Sec. 2) for a "Pueblo Lands Board" whose duty is to investigate, determine, and report the lands with the boundaries of the Pueblos, the title to which has not been extinguished as provided by the Act; that is, by adverse occupancy for specified periods (Sec. 3).

The purpose of the Act was to settle disputes between the Pueblos and white claimants. As to lands the title to which is found not extinguished, the Attorney General is to bring suit to quiet title (Sec. 1). Of especial significance is Section 17, which is:

> No right, title, or interest in or to the lands of the Pueblo Indians of New Mexico to which their title has not been extinguished as hereinbefore determined shall

> hereafter be acquired or initiated by virtue of the laws of the State of New Mexico, or in any other manner except as may hereafter be provided by Congress, and no sale, grant, lease of any character, or other conveyance of lands, or any title or claim thereto, made by any pueblo as a community, or any Pueblo Indian living in a community of Pueblo Indians, in the State of New Mexico, shall be of any validity in law or in equity unless the same be first approved by the Secretary of the Interior.

The point we desire to make is that it shows that Congress considered the lands of the Pueblo Indians subject to legislative control as are lands of the Indians which are held in *tribal* ownership.

Because Section 17 is prospective by its terms, it can not properly be said that it shows that theretofore the government had not exercised control or supervision over the Pueblos with respect to their lands, or had not stood as guardian or been under the duty of protecting the Pueblos. It was merely an evidence of the power of Congress to exercise control and of the relation which the Government had to the Pueblos. Construed in the light of the provisions of the Enabling Act, it makes clear the intent of Congress regarding the Pueblos. The intent of Congress in regard to its enactments may be indicated by subsequent enactments relating to the same subject matter. *Bowling* v. *United States,* 233 U. S. 528, at pp. 535, 536.

There is nothing in *Lane* v. *Pueblo of Santa Rosa,* 249 U. S. 110, which can properly be opposed to the assertion that the United States does have authority over the Pueblo lands such as to warrant its intervention to protect the Indians' rights. What was decided in the *Santa Rosa case* was that that Pueblo had capacity to institute and maintain an action to protect its lands from unauthorized encroachments of executive officers. The action which the bill in that case asserted was threatened, was not an exercise of guardianship, but of confiscation (p. 113). Compare *United States* v. *Mille Lac Chippewas,* 229 U. S. 498.

There is no contention in the instant case that what the United States seeks to accomplish is confiscation of the Pueblo's lands; on the contrary, it is clear that what is sought is *protection* of the lands; thus the Government is discharging a duty which it owes to the Pueblo Indians.

Nor is there any significance in the provision in Section 6 of the "Pueblo Lands Board Act," *supra,* giving the right to any Pueblo to seek a review in the Federal court of any finding of the Board affecting it. This is not a relinquishment of guardianship by the United States; it merely gives the Pueblo a status to maintain the proceedings so that the Indians may protect themselves from confiscation of their property. Perhaps Congress had in mind the decision in the *Santa Rosa case.*

What has been said about the provision in Section 6 is also applicable to the fourth paragraph of Section 4, which preserves "any existing right of the Pueblo Indians of New Mexico to assert and maintain unaffected by the provisions of this Act their title and right to any land by original proceedings, * * * in any court of competent jurisdiction" * * *. There is nothing in that provision inconsistent with the guardianship of the United States.

Nor is the fact that the Pueblo was under the territorial law granted a status to sue on its own behalf and name of any weight. Broadly speaking, individual Indians may maintain actions in State courts to protect their property rights, but that does not affect the right of the Government to sue respecting the Indians' property.

## II

**In the instant case the United States is suing to vindicate its policy with respect to the Indians and to discharge its obligations to them—a distinct governmental interest**

As Congress owes the Pueblo Indians the duty of protection, and of safeguarding their rights, when it acts to discharge those obligations it proceeds in its own right and to vindicate its own policy. This interest is entirely distinct from any property interest of the Indians for whom it acts, and indeed a property or pecuniary interest in the United States is not a prerequisite to give it capacity to sue.

In *Heckman* v. *United States,* 224 U. S. 413, this Court considered a challenge of the right of the United States to maintain a suit to set aside conveyances of lands made by Cherokee allottees in violation of restrictions on alienation imposed by Congress and said (p. 437):

> During the continuance of this guardianship, the right and duty of the Nation to enforce by all appropriate means the restrictions designed for the security of the Indians can not be gainsaid. * * * The maintenance of the limitations * * * is distinctly an interest of the United States. * * *
>
> This national interest is not to be expressed in terms of property, or to be limited to the assertion of rights incident to the ownership of a reversion or to the holding of a technical title in trust. When, in 1838, patent was issued to the Cherokees providing that it was subject to the condition that the granted lands should revert to the United States if the Cherokee Nation became extinct or abandoned them, neither the rights nor the duties of the United States were confined to the reversionary interest thus secured. And its relinquishment made it no less a matter of national concern that the restrictions designed to protect the Indian allottees should be enforced. But this object could not be accomplished if the enforcement were left to the Indians themselves, * * *. It was the intent of Congress that, for their sustenance and as a fitting aid to their

> progress, they should be secure in their possession during the period specified and should actually hold and enjoy the allotted lands.

We submit that there was no greater need for protection of the Cherokees than there is for the Pueblo Indians of New Mexico, and that what was said in the *Heckman case* is equally applicable to their situation. And the power of the Government to protect does not fall short of the need. *Sunderland* v. *United States,* 266 U. S. 226, 234.

Now the fact that the Pueblo of Laguna has fee simple title does not remove it from governmental supervision. *Brader* v. *James,* 246 U. S. 88, is very much in point on that proposition. There, a Choctaw full blood received a tract of land as heir of an allottee. As the law then stood she received the land free from restrictions on alienation. The power of Congress to reimpose restrictions was upheld, this Court saying that in view of its repeated decisions there was no doubt of the constitutionality of the legislation; that while the tribal relation existed the national guardianship continued, and (p. 96):

> This authority did not terminate with the expiration of the limitation upon the rights to dispose of allotted lands; the right and duty of Congress to safeguard the rights of Indians still continued.

Another striking case on this point is *United States* v. *Osage County,* 251 U. S. 128, where this

Court upheld the authority of the United States to sue to protect Osage allottees from arbitrary, excessive, and discriminatory taxes imposed upon their lands by tax officials of the State. The point which we especially emphasize is that Congress had previously made the lands subject to taxation. It was contended that by the Act which made the lands subject to taxation the United States exhausted its power as protector and guardian of the Osage Indians, and as to them had no longer any mission or authority whatever. The Court said of that (p. 132):

> We pass from this contention without further notice, as it is so obviously opposed to the doctrine upon the subject settled from the beginning.

And (p. 133):

> Certain is it that as the United States as guardian of the Indians had the duty to protect them from spoliation and, therefore, the right to prevent their being illegally deprived of the property rights conferred under the Act of Congress of 1906, the power existed in the officers of the United States to invoke relief for the accomplishment of the purpose stated.

A pecuniary interest in the relief sought is not essential; it is enough if there be an interest or concern arising out of an obligation to those for whose benefit the suits are brought. *United States* v. *New Orleans Pac. Ry. Co.*, 248 U. S. 507, 518.

This duty of safeguarding a dependent Indian people dwelling within the United States is a recognized public purpose. *Alaska Pacific Fisheries* v. *United States,* 248 U. S. 78, 88.

If this duty and authority and capacity exist and are upheld when the interest of an individual Indian under guardianship is concerned, how much more reason there is for upholding them where property of tribal Indians is concerned, or, to fit it to the precise case here presented, where the property involved is held by Indians by communal title.

This power or duty is not confined to cases which arise from the disregard of definite statutory inhibitions. Witness, the *Osage County case, supra,* and *Cramer* v. *United States,* 261 U. S. 219, where the United States sued to protect the individual occupancy rights on public lands of three Indians.

## III

**Since the United States was not a party to the previous suits brought by the Pueblo of Laguna, it can not be bound thereby, especially since the right which it seeks to vindicate is entirely distinct from the property rights of the Pueblo, the subject matter of the previous suits**

The United States was not a party to either of the two suits brought by the Pueblo of Laguna. This is a short answer to the question as to the

effect as against the United States in this suit of the judgments in those two previous suits.

But perhaps we should discuss somewhat the reason why we think this a sufficient answer.

The Pueblo of Laguna in instituting the two suits proceeded in its own right to protect itself against invasions of its property rights by the defendants. The United States, as we have seen, has a distinct and different status in its litigation, that of discharging a duty to its wards and enforcing and maintaining a public policy.

Now the Pueblo of Laguna had no standing to proceed in vindication of the rights of the Government; it could not maintain a suit upon that footing, and hence could not represent the United States. The interest which entitled it to maintain the two previous suits was its property interest derived from the title by patent from the United States.

Since the interests of the United States and the Pueblo are different and distinct, there can be no privity between them.

The rule as to estoppel by judgment or *res judicata* is that a right, question, or fact distinctly put in issue and directly determined by a court of competent jurisdiction as a ground of recovery can not be disputed in a subsequent suit between *the same parties or their privies. United States* v. *Moser,* 266 U. S. 236, 241.

All doubt that these two prior judgments can not be pleaded in bar of the present suit is, as we

think, foreclosed by previous decisions of this Court.

In *Bowling* v. *United States,* 233 U. S. 528, the Government sued to set aside a conveyance of land made by heirs of an allottee in violation of restrictions against alienation. It appeared that prior to the execution of the deed of conveyance a contract for the sale of the land had been entered into between the heirs and a predecessor in title of Bowling, and that a suit had been instituted by the heirs in the United States Court for the Northern District of the Indian Territory to enforce this contract by requiring a specific performance, which resulted in a decree sustaining the contract and requiring the acceptance of a deed to the land tendered by the heirs.

To the contention that this decree was *res judicata,* this Court said (pp. 534, 535):

> * * * as a transfer of the allotted lands contrary to the inhibition of Congress would be a violation of the governmental rights of the United States arising from its obligation to a dependent people, no stipulations, contracts, or judgments rendered in suits to which the government is a stranger, can affect its interest. The authority of the United States to enforce the restraint lawfully created can not be impaired by any action without its consent. *Heckman* v. *United States, supra,* p. 445. If, therefore, the conveyance by the allottee's heirs, in the present case, would otherwise have been

> subject to cancelation, it was not saved by reason of the judgment entered in their suit against the purchaser.

*Privett* v. *United States,* 256 U. S. 201, was a suit to cancel conveyances of land made by heirs of a half-blood Creek Indian, to whom it had been allotted as a homestead. The theory of the Government's bill was that a minor child of the allottee was born after March 4, 1906, and therefore, under the terms of an Act of Congress, the homestead allotment was inalienable and must be held for the support and benefit of this minor for a specified period.

One of the defenses interposed was that *it was settled conclusively* in a prior suit *that the child was born February 23, 1906* (in which event the land was alienable). That suit was brought by the immediate grantee of the heirs to quiet title in him to the land after he had taken the deeds. This Court sustained the right of the United States to litigate that same question, and said (p. 203):

> The reliance on the decision in the prior suit is ill-founded. That suit was between the heirs and one who was claiming under these conveyances, the United States not being a party, and the decree therein pronounced the conveyances valid. This suit is brought by the United States in virtue of its interest in maintaining the restriction and safeguarding the Indians in the

> possession and enjoyment of the lands allotted out of the tribal domain. As yet the Indians have not been fully discharged from the guardianship of the United States.

*Sunderland* v. *United States,* 266 U. S. 226, was a suit by the United States to set aside a conveyance of land made by a half-blood Creek Indian and to annul a decree of a State court quieting title to the land in the Indian's grantee. In this Court the appellant did not seriously question the correctness of the decree below in so far as it had annulled the State court decree, and this Court merely referred to the *Bowling* and the *Privett cases* (p. 232).

In view of the foregoing, we believe it clear that the first question certified should be answered in the affirmative.

## IV

**The answer to Question I disposes of Question II, unless the latter be considered independently of the former. In that event, we concede that the State court did have jurisdiction to enter the judgment specified, but do not concede it to have a binding effect as to the United States**

Question II, it seems to us, is disposed of by the answer to Question I. If, as we think, the judgments in the suits brought by the Pueblo of Laguna in its own name and right are not *res judicata* against the United States in the instant case, then it is wholly immaterial whether the State court in the first suit of the Pueblo had

jurisdiction to enter the kind of judgment which it did enter in that suit. Whatever the result of that judgment, the present suit of the United States is unaffected by it.

Likewise, if Question II is considered in connection with Question I, a negative answer to the latter will dispose of the former, because, if the United States is held to be barred by the former judgments that settles the matter.

Unless, therefore, Question II is considered independently of Question I, or it be determined that Question II must be answered first, it would seen unnecessary to discuss it.

In our judgment, the point which the Circuit Court of Appeals desired to present would have been made clearer if the reference to the United States had been omitted and the question framed thus:

> Did the State court of New Mexico have jurisdiction to enter a judgment in an action between Pueblo Indians and opposed claimants concerning title to land, where the result of that judgment would be to disregard a survey made by the United States of a Spanish or Mexican grant pursuant to an Act of Congress confirming such grant to said Pueblo Indians?

We believe this Question II to have been prompted by a contention made on behalf of the United States in the Circuit Court of Appeals that the territorial, later the State, court, judg-

ment was not binding either upon the United States or the Pueblo of Laguna, because the result of it was to alter and modify the northern boundary of the grant to the Pueblo as established by the survey made by the United States and upon which patent had issued to the Pueblo.

The theory upon which this contention was advanced was that the courts are without power to make or correct surveys of public lands; that such matters are the function of the political departments of the Government. *Knight* v. *Land Ass'n*, 142 U. S. 161; *Russell* v. *Maxwell Land Grant Co.*, 158 U. S. 253, and *Stoneroad* v. *Stoneroad*, 158 U. S. 240, were adduced to support that proposition.

Upon further consideration we are of opinion that this proposition can not be sustained.

There is no dispute that the territorial court had jurisdiction of the parties in the suit instituted in that court; the land involved was within its territorial jurisdiction; it had jurisdiction of suits to quiet title to lands so situated.

We do not construe the language used in the cases cited and others which are to the same effect that the courts have no power or jurisdiction to make or correct surveys to mean that the courts can not entertain actions to quiet title where the foundation of the action or the defense interposed to it is based upon an assertion of an error in the survey. We think that what is meant is that in such cases the court hearing the

cause is to be governed by this rule of law established by the adjudicated cases. But the ignoring of that rule does not make the judgment rendered a nullity. The judgment is erroneous, but the party prejudiced is not at liberty to ignore it; his remedy is by appeal.

The jurisdiction of a court does not depend upon the correctness of the judgment rendered; jurisdiction is the power to decide, not merely the power to decide correctly. *Fauntleroy* v. *Lum,* 210 U. S. 230, 235; *Binderup* v. *Pathe Exchange,* 263 U. S. 291, 305–308.

It follows that Question II, in the form in which it is submitted, should be answered in the negative, for the court did not have "jurisdiction" of the United States, which was not a party to the suit, and for the further reasons hereinbefore stated.

Considering the question as presenting the point upon which we believe the court desired instruction, we think it should be answered in the affirmative.

WILLIAM D. MITCHELL,
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B. M. PARMENTER,
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H. L. UNDERWOOD,
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OCTOBER, 1925.

# APPENDIX

[PUBLIC—No. 253—68TH CONGRESS]

[S. 2932]

An Act To quiet the title to lands within Pueblo Indian land grants, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That in order to quiet title to various lots, parcels, and tracts of land in the State of New Mexico for which claim shall be made by or on behalf of the Pueblo Indians of said State as hereinafter provided, the United States of America, in its sovereign capacity as guardian of said Pueblo Indians shall, by its Attorney General, file in the District Court of the United States for the District of New Mexico, its bill or bills of complaint with a prayer for discovery of the nature of any claim or claims of any kind whatsoever adverse to the claim of said Pueblo Indians, as hereinafter determined.

SEC. 2. That there shall be, and hereby is, established a board to be known as "Pueblo Lands Board" to consist of the Secretary of the Interior, the Attorney General, each of whom may act through an assistant in all hearings, investigations, and deliberations in New Mexico, and a third member to be appointed by the President of the United States. The board shall be provided with suitable quarters in the city of Santa Fe, New Mexico, and shall have power to require the

presence of witnesses and the production of documents by subpœna, to employ a clerk who shall be empowered to administer oaths and take acknowledgments, shall employ such clerical assistance, interpreters, and stenographers with such compensation as the Attorney General shall deem adequate, and it shall be provided with such necessary supplies and equipment as it may require on requisitions to the Department of Justice. The compensation and allowance for travel and expenses of the member appointed by the President shall be fixed by the Attorney General.

It shall be the duty of said board to investigate, determine, and report and set forth by metes and bounds, illustrated where necessary by field notes and plats, the lands within the exterior boundaries of any land granted or confirmed to the Pueblo Indians of New Mexico by any authority of the United States of America, or any prior sovereignty, or acquired by said Indians as a community by purchase or otherwise, title to which the said board shall find not to have been extinguished in accordance with the provisions of this Act, and the board shall not include in their report any claims of non-Indian claimants who, in the opinion of said board after investigation, hold and occupy such claims of which they have had adverse possession, in accordance with the provisions of section 4 of this Act: *Provided, however,* That the board shall be unanimous in all decisions whereby it shall be determined that the Indian title has been extinguished.

The board shall report upon each pueblo as a separate unit and upon the completion of each report one copy shall be filed with the United States

District Court for the District of New Mexico, one with the Attorney General of the United States, one with the Secretary of the Interior, and one with the Board of Indian Commissioners.

SEC. 3. That upon the filing of each report by the said board, the Attorney General shall forthwith cause to be filed in the United States District Court for the District of New Mexico, as provided in section 1 of this Act, a suit to quiet title to the lands described in said report as Indian lands the Indian title to which is determined by said report not to have been distinguished.

SEC. 4. That all persons claiming title to, or ownership of any lands involved in any such suit, or suits, may in addition to any other legal or equitable defenses which they may have or have had under the laws of the Territory and State of New Mexico, plead limitation of action, as follows, to wit:

(a) That in themselves, their ancestors, grantors, privies, or predecessors in interest or claim of interest they have had open, notorious, actual, exclusive, continuous, adverse possession of the premises claimed under color of title from the 6th day of January, 1902, to the date of the passage of this Act, and have paid the taxes lawfully assessed and levied thereon to the extent required by the statutes of limitation, or adverse possession of the Territory or of the State of New Mexico, since the 6th day of January, 1902, to the date of the passage of this Act, except where the claimant was exempted or entitled to be exempted from such tax payment.

(b) That in themselves, their ancestors, grantors, privies, or predecessors in interest or claim of interest, they have had open, notorious, actual,

exclusive, continuous, adverse possession of the premises claimed with claim of ownership but without color of title from the 16th day of March, 1889, to the date of the passage of this Act, and have paid the taxes lawfully assessed and levied thereon to the extent required by the statutes of limitation or adverse possession of the Territory or of the State of New Mexico, from the 16th day of March, 1899, to the date of the passage of this Act, except where the claimant was exempted or entitled to be exempted from such tax payment.

Nothing in this Act contained shall be construed to impair or destroy any existing right of the Pueblo Indians of New Mexico to assert and maintain unaffected by the provisions of this Act their title and right to any land by original proceedings, either in law or equity, in any court of competent jurisdiction and any such right may be asserted at any time prior to the filing of the field notes and plats as provided in section 13 hereof, and jurisdiction with respect to any such original proceedings is hereby conferred upon the United States District Court for the District of New Mexico with right of review as in other cases: *Provided, however,* That any contract entered into with any attorney or attorneys by the Pueblo Indians of New Mexico, to carry on such litigation shall be subject to and in accordance with existing laws of the United States.

SEC. 5. The plea of such limitations, successfully maintained, shall entitle the claimants so pleading to a decree in favor of them, their heirs, executors, successors, and assigns for the premises so claimed by them, respectively, or so much thereof as may be established, which shall have the

effect of a deed of quitclaim as against the United States and said Indians, and a decree in favor of claimants upon any other ground shall have a like effect.

The United States may plead in favor of the pueblo, or any individual Indian thereof, as the case might be, the said limitations hereinbefore defined.

SEC. 6. It shall be the further duty of the board to separately report in respect of each such pueblo—

(a) The area and character of any tract or tracts of land within the exterior boundaries of any land granted or confirmed to the Pueblo Indians of New Mexico and the extent, source, and character of any water right appurtenant thereto in possession of non-Indian claimants at the time of filing such report, which are not claimed for said Indians by any report of the board.

(b) Whether or not such tract or tracts of land or such water rights could be or could have been at any time recovered for said Indians by the United States by seasonable prosecution of any right of the United States or of said Indians. Seasonable prosecution is defined to mean prosecution by the United States within the same period of time as that within which suits to recover real property could have been brought under the limitation statutes of the Territory and State of New Mexico.

(c) The fair market value of said water rights and of said tract or tracts of land (exclusive of any improvements made therein or placed thereon by non-Indian claimants) whenever the board

shall determine that such tract or tracts of land or such water rights could be or could have been at any time recovered for said Indians by the United States by seasonable prosecution of any right of the United States or of said Indians, and the amount of loss, if any, suffered by said Indians through failure of the United States seasonably to prosecute any such right.

The United States shall be liable, and the board shall award compensation, to the pueblo within the exterior boundaries of whose lands such tract or tracts of land shall be situated or to which such water rights shall have been appurtenant to the extent of any loss suffered by said Indians through failure of the United States seasonably to prosecute any right of the United States or of said Indians, subject to review as herein provided. Such report and award shall have the force and effect of a judicial finding and final judgment upon the question and amount of compensation due to the Pueblo Indians from the United States for such losses. Such report shall be filed simultaneously with and in like manner as the reports hereinbefore provided to be made and filed in section 2 of this Act.

At any time within sixty days after the filing of said report with the United States District Court for the District of New Mexico as herein provided the United States or any pueblo or Indians concerned therein or affected thereby may, in respect of any report upon liability or of any finding of amount or award of compensation set forth in such report, petition said court for judicial review of said report, specifying the portions thereof in

which review is desired. Said court shall thereupon have jurisdiction to review, and shall review, such report, finding, or award in like manner as in the case of proceedings in equity. In any such proceeding the report of the board shall be prima facie evidence of the facts, the values, and the liability therein set forth, subject, however, to be rebutted by competent evidence. Any party in interest may offer evidence in support or in opposition to the findings in said report in any respect. Said court shall after hearing render its decision so soon as practicable, confirming, modifying, or rejecting said report or any part thereof. At any time within thirty days after such decision is rendered said court shall, upon petition of any party aggrieved, certify the portions of such report, review of which has been sought, together with the record in connection therewith, to the United States Circuit Court of Appeals for the Eighth Circuit, which shall have jurisdiction to consider, review, and decide all questions arising upon such report and record in like manner as in the case of appeals in equity, and its decision thereon shall be final.

Petition for review of any specific finding or award of compensation in any report shall not affect the finality of any findings nor delay the payment of any award set forth in such report, review of which shall not have been so sought, nor in any proceeding for review in any court under the provisions of this section shall costs be awarded against any party.

SEC. 7. It shall be the further duty of the board to investigate, ascertain, and report to the Secre-

tary of the Interior who shall report to the Congress of the United States, together with his recommendation, the fair market value of lands, improvements appurtenant thereto, and water rights of non-Indian claimants who, in person or through their predecessors in title prior to January 6, 1912, in good faith and for a valuable consideration purchased and entered upon Indian lands under a claim of right based upon a deed or document purporting to convey title to the land claimed or upon a grant, or license from the governing body of a pueblo to said land, but fail to sustain such claim under the provisions of this Act, together with a statement of the loss in money value thereby suffered by such non-Indian claimants. Any lands lying within the exterior boundaries of the pueblo of Nambe land grant, which were conveyed to any holder or occupant thereof or his predecessor or predecessors in interest by the governing authorities of said pueblo, in writing, prior to January 6, 1912, shall unless found by said board to have been obtained through fraud or deception, be recognized as constituting valid claims by said board and by said courts, and disposed of in such manner as lands the Indian title to which has been determined to have been extinguished pursuant to the provisions of this Act: *Provided,* That nothing in this section contained with reference to the said Nambe Pueblo Indians shall be construed as depriving the said Indians of the right to impeach any such deed or conveyance for fraud or to have mistakes therein corrected through a suit in behalf of said pueblo or of an individual Indian under the provisions of this Act.

SEC. 8. It shall be the further duty of the board to investigate, ascertain, and report to the Secretary of the Interior the area and the value of the lands and improvements appurtenant thereto of non-Indian claimants within or adjacent to Pueblo Indian settlements or towns in New Mexico, title to which in such non-Indian claimants is valid and indefeasible, said report to include a finding as to the benefit to the Indians in anywise of the removal of such non-Indian claimants by purchase of their lands and improvements and the transfer of the same to the Indians, and the Secretary of the Interior shall report to Congress the facts with his recommendations in the premises.

SEC. 9. That all lands, the title to which is determined in said suit or suits, shall, where necessary, be surveyed and mapped under the direction of the Secretary of the Interior, at the expense of the United States, but such survey shall be subject to the approval of the judge of the United States District Court for the District of New Mexico, and if approved by said judge shall be filed in said court and become a part of the decree or decrees entered in said district court.

SEC. 10. That necessary costs in all original proceedings under this Act, to be determined by the court, shall be taxed against the United States and any party aggrieved by any final judgment or decree shall have the right to a review thereof by appeal or writ of error or other process, as in other cases, but upon such appeal being taken each party shall pay his own costs.

SEC. 11. That in the sense in which used in this Act the word "purchase" shall be taken to mean the acquisition of community lands by the Indians

other than by grant or donation from a sovereign.

SEC. 12. That any person claiming any interest in the premises involved but not impleaded in any such action may be made a party defendant thereto or may intervene in such action, setting up his claim in usual form.

SEC. 13. That as to all lands within the exterior boundaries of any lands granted or confirmed to the Pueblo Indians of New Mexico, by any authority of the United States of America or any prior sovereignty, or acquired by said Indians as a community by purchase or otherwise and which have not been claimed for said Indians by court proceedings then pending or the findings and report of the board as herein provided, the Secretary of the Interior at any time after two years after the filing of said reports of the board shall file field notes and plat for each pueblo in the office of the surveyor general of New Mexico at Santa Fe, New Mexico, showing the lands to which the Indian title has been extinguished as in said report set out, but excluding therefrom lands claimed by or for the Indians in court proceedings then pending, and copies of said plat and field notes certified by the surveyor general of New Mexico as true and correct copies shall be accepted in any court as competent and conclusive evidence of the extinguishment of all the right, title, and interest of the Indians in and to the lands so described in said plat and field notes and of any claim of the United States in or to the same. And the Secretary of the Interior within thirty days after the Indians' right to bring independent suits under this Act shall have expired, shall cause notice to be published in some newspaper or news-

papers of general circulation issued, if any there be, in the county wherein lie such lands claimed by non-Indian claimants, respectively, or wherein some part of such lands are situated, otherwise in some newspaper or newspapers of general circulation published nearest to such lands, once a week for five consecutive weeks, setting forth as nearly as may be the names of such non-Indian claimants of land holdings not claimed by or for the Indians as herein provided, with a description of such several holdings, as shown by a survey of Pueblo Indian lands heretofore made under the direction of the Secretary of the Interior and commonly known as the "Joy Survey," or as may be otherwise shown or defined by authority of the Secretary of the Interior, and requiring that any person or persons claiming such described parcel or parcels of land or any part thereof, adversely to the apparent claimant or claimants so named as aforesaid, or their heirs or assigns, shall, on or before the thirtieth day after the last publication of such notice, file his or their adverse claim in the United States Land Office in the land district wherein such parcel or parcels of land are situate, in the nature of a contest, stating the character and basis of such adverse claim, and notice of such contest shall be served upon the claimant or claimants named in the said notice, in the same manner as in cases of contest of homestead entries. If no such contest is instituted as aforesaid, the Secretary of the Interior shall issue to the claimant or claimants, or their heirs or assigns, a patent or other certificate of title for the parcel or parcels of land so described in said notice; but if a contest be filed it shall

proceed and be heard and decided as contests of homestead entries are heard and decided under the rules and regulations of the General Land Office pertinent thereto. Upon such contest either party may claim the benefit of the provisions of section 4 of this Act to the same extent as if he were a party to a suit to quiet title brought under the provisions of this Act, and the successful party shall receive a patent or certificate of title for the land as to which he is successful in such proceeding. Any patent or certificate of title issued under the provisions of this Act shall have the effect only of a relinquishment by the United States of America and the said Indians.

If after such notice more than one person or group of persons united in interest makes claim in such land office adverse to the claimant or claimants named in the said notice, or to any other person or group of persons who may have filed such contest, each contestant shall be required to set forth the basis and nature of his respective claim, and thereupon the said claims shall be heard and decided as upon an original contest or intervention.

And in all cases any person or persons whose right to a given parcel or parcels of land has become fixed either by the action of the said board or the said court or in such contest may apply to the Commissioner of the General Land Office for a patent or certificate of title and receive the same without cost or charge.

SEC. 14. That if any non-Indian party to any such suit shall assert against the Indian title a claim based upon a Spanish or Mexican grant, and if the court should finally find that such claim

by the non-Indian is superior to that of the Indian claim, no final decree or judgment of ouster of the said Indians shall be entered or writ of possession or assistance shall be allowed against said Indians, or any of them, or against the United States of America acting in their behalf. In such case the court shall ascertain the area and value of the land thus held by any non-Indian claimant under such superior title, excluding therefrom the area and value of lots or parcels of land the title to which has been found to be in other persons under the provisions of this Act: *Provided, however,* That any findings by the court under the provisions of this section may be reviewed on appeal or writ of error at the instance of any party aggrieved thereby, in the same manner, to the same extent, and with like effect as if such findings were a final judgment or decree. When such finding adverse to the Indian claim has become final, the Secretary of the Interior shall report to Congress the facts, including the area and value of the land so adjudged against the Indian claim, with his recommendations in the premises.

SEC. 15. That when any claimant, other than the United States for said Indians not covered by the report provided for in section 7 of this Act, fails to sustain his claim to any parcel of land within any Pueblo Indian grant, purchase, or donation under the provisions of this Act, but has held and occupied any such parcel in good faith, claiming the same as his own, and the same has been improved, the value of the improvements upon the said parcel of land shall be found by the court and reported by the Secretary of the Inte-

rior to Congress, with his recommendations in the premises.

SEC. 16. That if any land adjudged by the court to said lands board against any claimant be situate among lands adjudicated or otherwise determined in favor of non-Indian claimants and apart from the main body of the Indian land, and the Secretary of the Interior deems it to be for the best interest of the Indians that such parcels so adjudged against the non-Indian claimant be sold, he may, with the consent of the governing authorities of the pueblo, order the sale thereof, under such regulations as he may make, to the highest bidder for cash, and if the buyer thereof be other than the losing claimant, the purchase price shall be used in paying to such losing claimant the adjudicated value of the improvements aforesaid, if found under the provisions of section 15 hereof, and the balance thereof, if any, shall be paid over to the proper officer, or officers, of the Indian community, but if the buyer be the losing claimant, and the value of his improvements has been adjudicated as aforesaid, such buyer shall be entitled to have credit upon his bid for the value of such improvements so adjudicated.

SEC. 17. No right, title, or interest in or to the lands of the Pueblo Indians of New Mexico to which their title has not been extinguished as hereinbefore determined shall hereafter be acquired or initiated by virtue of the laws of the State of New Mexico, or in any other manner except as may hereafter be provided by Congress, and no sale, grant, lease of any character, or other conveyance of lands, or any title or claim thereto, made by any pueblo as a community, or any

Pueblo Indian living in a community of Pueblo Indians, in the State of New Mexico, shall be of any validity in law or in equity unless the same be first approved by the Secretary of the Interior.

SEC. 18. That the pleading, practice, procedure, and rules of evidence shall be the same in all causes arising under this Act as in other civil causes in the Federal courts, except as otherwise herein provided.

SEC. 19. That all sums of money which may hereafter be appropriated by the Congress of the United States for the purpose of paying in whole or in part any liability found or decreed under this Act from the United States to any pueblo or to any of the Indians of any pueblo, shall be paid over to the Bureau of Indian Affairs, which Bureau, under the direction of the Secretary of the Interior, shall use such moneys at such times and in such amounts as may seem wise and proper for the purpose of the purchase of lands and water rights to replace those which have been lost to said pueblo or to said Indians, or for purchase or construction of reservoirs, irrigation works, or the making of other permanent improvements upon, or for the benefit of lands held by said pueblo or said Indians.

Approved, June 7, 1924.

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WM. R. STANSBU
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*Brief for Appellee*

# In the Supreme Court of the United States.

OCTOBER TERM, [redacted] 1925

No. [redacted] 208

UNITED STATES OF AMERICA, *Appellant*,

vs.

JOSE CANDELARIA ET AL., *Appellees*.

On Certificate from the Circuit Court of Appeals.

APPEAL FROM THE DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO.

FRANK W. CLANCY,
*Counsel for Appellees.*

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# In The
# United States Circuit Court Of Appeals

FOR THE
EIGHTH CIRCUIT.

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## No. 6595

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UNITED STATES OF AMERICA,
Appellant,

v.

JOSE CANDELARIA ET AL,
Appellees.

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**BRIEF FOR APPELLEES.**

Counsel for appellant, in his brief, devotes a great deal of space to an attempt to show that the Pueblo Indians are a dependent people, wards of the government, the duty of which it is to protect them in their property rights, and that their status was the same under the former governments of Spain and Mexico. This is all interesting, and counsel displays the results of a great amount of research, so set forth as to reflect credit on his already established reputation as a historian, but while appellees do not agree that he has established that for which he contends as to the condition of this class of Indians, yet they decline to enter into a discussion thereof because it is immaterial to anything proper for consideration by this court on this appeal. It may well be suggested, and not flippantly, that all such matter is like "the flowers that bloom in the spring," in the language of one of the Gilbert—Sullivan operas, which have "nothing to do with the case."

Let us now attempt, as briefly as possible, consistent with clearness, to state what this case is, a sshown by the record, and substantially as stated in the brief for appellant.

This is a suit brought by the United States against a large number of defendants to quiet the title in the Pueblo of Laguna, to certain real estate described in the bill of complaint. There is no allegation of any ownership by the complainant of the land which is the subject of the bill of complaint, nor any allegation that complainant has any right, title or interest in said land, but on the subject of ownership the only allegation is that the Pueblo of Laguna is the owner of a tract of land known as the Paguate Purchase, having title thereto by a patent from the United States. On the face of the bill of complaint it is clear that whatever controversy there may be about saidland is one between the Pueblo of Laguna and the defendants, and therefore defendants in their answer have set up as a defense that there has been a former adjudication of any possible issue that can be raised in the present case, in a court of competent jurisdiction, which was the District Court of the County of Valencia in New Mexico and that such adjudication in that court has been adopted and followed in this court in another suit instituted by the same plaintiff which was the Pueblo of Laguna. As already stated, there is nothing in the bill of complaint to show why the plaintiff brings this suit. The only allegation which remotely squints at any reason for bringing this suit by complainant is to be found in the second subdivision of the bill of complaint where itis set out that all the members of the Pueblo of Laguna are wards of complainant, subject to the guardianship and exclusive control of complainant and that the Indians and the Pueblo are without legal right or power to alienate any of their land without the consent and authority of complainant. To these alleagtions the answer of defendants is, in effect, a demurrer, but in order to avoid any misunderstanding as to defendant's position, this demurrer is followed by a distinct denial that the Indians are wards of complainant or subject to the guardianship or exclusive control of complainant or that they are without legal

right to alienate any of their lands without the consent or authority of complainant, and the attention of he court is specially called to the fact that this allegation by complainant of a lack of power to alienate lands is not connected with any thing else in the bill of complaint as there is no allegation of any attempt thus to alienate lands or of any claim of defendants that such alienation has been made or attempted.

The fact, if it were a fact, that the Indians are under the guardianship and exclusive control of complainant, gives no right to complainant to file this bill of complaint for the benefit of the Pueblo which by the bill of complaint itself is correctly alleged to be, under the laws of New Mexico, a corporation, in which the title to the land is vested.

By the allegations of the answer it is made clearly to appear that there has been an adjudication in the District Court of Valencia County, in a suit brought by the Pueblo of Laguna for the same purpose as the present suit and against the same defendants who appeared in that suit, brought for the purpose of quieting the title of the Pueblo of Laguna to the lands described in the present bill of complaint against the claims of defendants, and that that adjudication was to the effect that the Pueblo was not entitled to any relief against defendants and that its complaint should be dismissed. The purpose of that suit and of the present one is the same.

It is further shown by the answer that later, on the 17th day of March, 1916, the said Pueblo began another suit against defendants in the court below, for precisely the same purpose as in their first suit and in the present suit, praying the same relief, and that the court below dismissed said last mentioned suit because it had been fully adjudicated in the District Court of Valencia County; and we thus have a second former adjudication of the controversy which is sought to be renewed in the present case.

## POINTS AND AUTHORITIES.

### FIRST

**The former adjudications are a bar to the prosecution of this case.**

There does not seem to be any possible way for complainant to avoid the effect of these former adjudications unless it should be by an attempted denial of the power of the Pueblo of Laguna to bring any suit whatever in any court, but such an attempt would be manifestly inconsistent with the allegation in the bill of complaint that the Pueblo is a corporation created and existing under the laws of New Mexico, especially if we refer to the law which created the corporation, originally enacted in 1847 and now to be found in section 2784 of the Codification of New Mexico Statutes in 1915 and which distinctly declares that the Pueblos may sue and be sued, plead and be impleaded, bring and defend in any court of law or equity, all such actions, pleas and matters whatsoever, proper to recover, protect, reclaim, demand or assert the right of such inhabitants or any individual thereof, to any lands, tenements or hereditaments, possessed, occupied or claimed contrary to law, by any person whatsoever.

This right of the Pueblo to sue and be sued is so clearly recognized by the courts of New Mexico and even by the Supreme Court of the United States that it cannot now be considered as in any way doubtful.

Pueblo of Laguna v. Pueblo of Acoma, - N. M. 220.
De la O v. Pueblo of Acoma, 1 N. M. 226.
De Baca v. Pueblo of Santo Domingo, 10 N. M. 38.
Pueblo of Nambe v. Romero, 10 N. M., 58.
Pueblo of Isleta v. Tondre, 18 N. M. 388.
U. S. v. Valdez de Conway, 175 U. S. 60.
Lane v. Santa Rosa, 249 U. S. 110, 112.

Attention is specially called to the above cited case of Pueblo of Nambe v. Romero which bears a striking resemblance to the present case, having been brought by the Pueblo seeking to quiet title and to restrain trespasses, and it appears that the de-

fendant claimed under a deed from the Pueblo made in 1854, but the court held that it was unnecessary to determine the question of the validity of that deed as the adverse possession shown was sufficient to vest in appellee a title to the premises. In the present controversy, the District Court of Valencia County held that the long continued possession of defendants was sufficient to bar the action of the Pueblo. That the adjudication against the Pueblo of Laguna, a corporation, is binding on the appellant, ought to be obvious, no matter what may be the status of the Indians, but there are some authorities which are interesting, to say the least.

In People v. Smith 93 Calif., 490, 29 Pac. 57, it was decided that a judgment in favor of Smith against the city and county of San Francisco, was an estoppel against the State, which, upon the relation of a citizen, sued Smith to abate a nuisance which consisted of a building on what was claimed to be a street, the former adjudication being that the land where the house stood, belonged to Smith. This decision merely follows People v. Holladay, 29 Pac., 54, 56, in which the court held that a similar judgment against the city and county of San Francisco in an action brought by the city and county, was a bar to the action of the State, the court saying

> "We entertain no doubt that the City and County of San Francisco has the authority to maintain an action for the purpose of preserving the rights of the general public to the use of squares, or land claimed as such, within its limits and that in such action it is authorized to put in issue the alleged rights of the people to such easement, and that the State itself is bound by the result of such litigation, if the same is not collusive. The rule that the citizen shall not be twice vexed for the same cause of action, is binding upon the State as upon other litigants."

See also People v. Beaudry, 27 Pac., 610.

In Indiana, appellant instituted a suit against a city and two individuals, to obtain an injunction against the extension of improvement of a public street over land which she claimed and to

have it adjudged that the city had no authority so to extend the improvement. The defendants filed a joint answer of a former adjudication, in a suit in which appellant was plaintiff and the city and its civil engineer were defendants, in which the identical matters set up in the complaint were adjudicated against appellant and in favor of defendants, and that the two individuals then sued were the marshal and an employe of the city acting under its authority in making the improvement. Objection was that the parties were not the same, but the court held that the city was the real party in interest and that the former adjudication was conclusive against appellant.

Foust v. Huntington et al., 15 N. E. 337.

In Washington, a man and wife brought ejectment to determine adverse claims to real estate which was claimed to be community property. Defendants pleaded that, in a suit between one of the defendants and the husband, all questions involved were adjudicated by a decision against the husband. The objection was that the parties were not the same and that the judgment could not bind the wife. The court said

> "I do not think that the same question can be again litigated without establishing a principle which would be pernicious. To allow a married man to come into a court of competent jurisdiction and submit a controversy for final determination, and, being defeated, then bring his wife into court, and go through the same litigation over again would be harassing, and prejudicial to the best interests of the public.

Lichty v. Lewis, 63 Fed. 535, 536.

A woman sued a Turnpike Company for damages caused by her falling over an obstruction in the public highway maintained by the defendant, and the defendant pleaded that the obstruction was placed and maintained by one Shaffer, and that plaintiff had already sued Shaffer and judgment in that action had been en-

tered in favor of Shaffer and against her. The court held that the former judgment was a bar, the relation between Shaffer and the defendant being analogous to that of principal and agent, or principal and surety, or master and servant.

Featherson v. Turnpike Co., 24 N. Y. S. 603, 604-5.

The syllabus in a New York case is as follows:

> "A judgment in an action by several plaintiffs is, in a subsequent action by one of such plaintiffs only against the same defendant, res judicata as to issues involved in the first action."

In the opinion, the court, after stating what was essential for the plaintiffs to establish, speaks as follows:—

> "Those issues were directly involved on the trial of that action, and decided in favor of the plaintiffs. Hence, they cannot be litigated again in this action, and the learned trial Judge properly excluded evidence to show to the contrary of the facts established by the judgment."

Palmer v. Ins. Co., 30 N. Y. S., 1044, 1049.

In another New York case, in the Court of Appeals, the syllabus is as follows:

> "An action was brought by a person entitled to his interests in certain trust property for the purpose of fixing the rights of the several claimants and afterwards another action was instituted by another claimant for the same purpose, in which action the parties were the same as in the earlier action, except that there was to the later action one additional party. The same facts were before the court in both actions. The court held that the judgment in the earlier action was conclusive on all the parties to the later action."

Tausiede v. Junel, 30 N. E., 1000.

As to the degree of particularity required in pleading a former adjudication, see

Whitcomb v. Hardy, 71 N. W., 263, 264.

The issuance of a patent to the Pueblo of Laguna for its lands, constituted the Indians of that Pueblo a body corporate capable of receiving and holding the lands conveyed even if the Pueblo were not already a corporation.

North Hempstead v. Hempstead, Hopkins Ch., 288, 293.

And it was a distinct recognition by the United States of the existence of the Pueblo as a body corporate under the legislation of the Territory of New Mexico. Attention is called also to the Act of Congress of December 22, 1858, whereby Congress had recognized the existence of these bodies corporate when it confirmed their claim for land to sixteen Pueblos by name. The territory had made them corporations by the legislation of 1847, and, by this Act of 1858, Congress recognized and approved that action of the territorial legislature.

In a Missouri case, the first paragraph of the syllabi is as follows:

> "Where the interests of parties in the prosecution of a suit are mutual although the suit is in the name of one of the parties, both are represented and both are equally estopped to deny any of the issues adjudicated therein in any suit between them jointly or singly on the one side and the same defendant on the other side."

Carmody v. Hanick, 85 Mo. App. 659-60.

In 1836, in the Court of Appeals of South Carolina, in an opinion by Justice Johnson there appears the following language:

> "Judgments and decrees of courts of competent jurisdiction directly on the point in controversy, are admissible

in evidence, not only between the parties, but all persons standing in the relation of privies in blood, in estate, or in law. And I understand by the term "privies" when applied to a judgment or decree, one whose interest has been legally represented at the trial."

M'Mullen v. Brown, 2 Hill Ch. 457, 460.

**SECOND.**

**Whether the judgment of the Valencia county court, were correct or not, does not affect its validity as res judicata.**

Much argument is made for appellant in an attempt to show the invalidity of the Valencia county judgment, but the foundation of that argument is, in brief, that the Pueblo of Laguna had no authority to begin any suit as to its lands, without the participation of the government therein. This cannot be reconciled with the decision in the case of Lane vs. Santa Rosa, 249 U. S. 110, by the court of last resort, which declares that such Pueblos have unlimited power to sue under the statute of New Mexico. That case is hereinafter further considered.

The Valencia county judgment remains in full force, and cannot properly be here reviewed. It could have been reviewed, but never was, by appeal to th Supreme Court of New Mexico and possibly by writ of error from the Supreme Court of the United States.

**THIRD.**

**The argument of appellant, if sustained, would be destructive of the Pueblo Indians.**

The argument contained in the appellant's brief is in harmony with what appears to have been the settled determination of that portion of the executive department of the United States charged with the administration of Indian affairs, to reduce the civilized Pueblo Indians to the status of what the Spanish-speaking people call wild Indians, (Indios bravos), such as the Apaches, Navajos and Comanches, and the authorities cited so far as they relate to any Indians, relate to Indians of those classes, with the exception

of the Sandoval case in 231 U. S., 38, and they are therefore quite inapplicable to the Pueblo Indians. The point sought to be established is that the Pueblo Indians, like the Cherokees and other similar Indians, are in a state of dependent tutelage, and have practically no existence of their own which would entitle them to any standing in the courts without the intervention of the U. S. Government and it is argued that the proceedings in the district court of Valencia County, in a suit brought by the Pueblo of Laguna, concerning the same land as to which the present suit is brought, are void, and of no effect, because the government was not a party to the suit. It is to be noted that no reference in appellant's brief is made to the case of Lane vs. Santa Rosa, 249, U. S., 110, upon which the court below rested its decision that the Pueblo had a right to sue as it did, and which is in effect, a complete answer to the whole of appellant's argument on that point in its brief. The omission to make any reference to that case, may, perhaps, be considered as an exercise of the better part of valor, as the opinion distinctly declares that the Indian Pueblo, during the Spanish as also Mexican dominion, enjoyed a large measure of local self-government and was regarded as having capacity to acquire and hold lands and other property and that with much reason this might be regarded as enabling and entitling it to become a suitor for the purposes of enforcing or defending its property interests. The Court, however, goes on to say that its decision need not be put on that ground, for there is another reason arising out of our own laws which is in itself sufficient. That ground is to be found in the early legislation of New Mexico, which reappears as Sec. 2784 of the Codification of 1915, and the court goes on to say that after the Gadsden treaty by which the United States acquired that part of the country where the Pueblo of Santa Rosa is located, Congress made that part of the country part of New Mexico and subjected it to all the laws of that territory, and follows this with the statement that if the Pueblo was not a legal entity and juristic person before, it became such under that law and the court further says that the fact that Arizona has since become a state does not

affect the Pueblo's corporate status, or its power to sue. Attention should be called to the fact that the provision in the Enabling Act under which Arizona became a state, with regard to the Pueblo Indians and their lands, is the same as the provision of that act with regard to New Mexico.

The Congress of the United States in the Act entitled "An Act to quiet the title to lands within Pueblo Indian land grants and for other purposes" which was approved June 7, 1924, has substantially recognized the pre-existing right of Pueblo Indians of New Mexico to maintain suits in any court of competent jurisdiction to assert their title and right to land, in the fourth paragraph of section 4 of said act, and of the right of any Pueblo or Indians to act in court independent of the government, in the sixth paragraph of section 4 thereof.

If a Pueblo has the right to sue in an effort to protect what it claims to be its rights, certainly it must be bound by the result of that litigation, if unsuccessful. If it has a right to proceed by suit, then the court must have jurisdiction over it, and jurisdiction includes the power to decide upon what is contested in any such suit. It would be great folly to hold that a litigant has a right to sue but that anadverse decision would be void. In the Santa Rosa case there is no hint of limitations upon the right of the Indian Pueblo to sue with regard to its lands and a reference to the opinion will show that the same sort of argument now submitted to this court was made by defendants in that case and the opinion of the court plainly indicates that the Indian Pueblos are not to be classed with Indians like Cherokees, Navajos and Apaches, none of which, under any government, had any distinct entity which would permit them to bring suit in the courts to protect any of their claimed rights. Bearing this distinction in mind, we will proceed to an examination of some of the authorities in Indian cases cited in appellant's brief, and we will find that they are not at all applicable to the Pueblo of Laguna with the exception of the Sandoval case, which however, throws no light upon the

disputed question as to whether the Indian Pueblos have the right to bring a suit to protect alleged rights to their lands.

One of the cases cited is that of the U. S. vs. Kamaga, 118 U. S. 375. The question decided in that case was one merely of jurisdiction of the U. S. courts of the crime of murder committed by an Indian, who murdered another Indian in California within the limits of an Indian Reservation. The opinion stated that there were six questions certified by the circuit and district judges holding the circuit court for the District of California and that the point of them all was set out in two of them which merely involved the question of the jurisdiction of the courts of the United States to try and punish an Indian for the crime of murder upon another Indian, belonging to the same Indian tribe, the crime having been committed upon the Indian Reservation set aside for the use of the tribe to which both Indians belonged, and this question arose under the provisions of an act of Conrgess of March 3, 1885, Sec. 9, the first clause of which provided that Indians committing against the person or property of another Indian or other persons any of certain enumerated crimes within any Territory of the United States and either within or without the Indian reservation should be subject therefor to the laws of said Territory relating to said crimes and be tried in the same courts as are other persons charged with the commission of said crimes, but in the second clause it provided that all such Indians committing any of said crimes against the person or property of another Indian or other person within the boundaries of a State and within the limits of an Indian reservation should be tried in the same courts as all other persons committing any of the said crimes within the exclusive jurisdiction of the United States. The court said that these Indian Tribes are the wards of the nation and are communities dependent on the United States for their daily food, and for their political rights. It will be seen that such Indian Tribes are quite different from the Indian Pueblos as described in the case of Lane vs. Santa Rosa, 249 U. S., 119. The Court held that the act of congress was valid and that the United States court

had jurisdiction of the offense charged, but there is nothing in the opinion which can properly be considered as applicable to the Indian Pueblos.

Another case cited is that of Heckman vs. U. S., 224 U. S., 413, which is cited to sustain the position that the sovereign duty of the government to its wards is the basis for the institution of suits of this character. The Heckman case was one brought by the United States to cancel conveyances of lands of the Cherokee Indians upon the ground that they were inviolation of existing restrictions upon the power of alienation. The opinion shows that the conveyances were executed by members of the Cherokee Tribe, of lands allotted to them in severalty, and that the statute under which the allotments were made provided that the lands should be inalianable for a period specified. It will be seen at once that this was a case of lands granted to the Indians by the government under a restriction and the court held that that restriction was valid and that the Indians could not alienate their allotted lands, but this has no application to the Pueblos, each of which has a grant of land from the United States, withou any condition or restriction, and moreover, in the present case there is no question as to an attempt by the Indians to alienate their lands.

Another case is of the U. S. vs. Beebe, 127 U. S., 338, from which a quotation is made to the effect that the United States is not bound by any statute of limitation nor barred by any laches in a suit brought to enforce a public right or serve a public interest. The court held that where the government is a mere formal complainant and not the real party to the title of the property in controversy, the defense of the statute of limitations and laches and lapse of time may be successfully interposed, and in that particular case the court held that the government was a mere formal complainant in the suit and therefore affirmed the decree of the court below which dismissed the case. In the present case it is to be recalled that the government is not the real party in interest but that the Pueblo of Laguna is that party and that

that Pueblo of Laguna under the decision of the case of Lane vs. Santa Rosa, is an entity and juristic body capable of suing to protect its alleged rights and that it did so sue in the District Court of Valencia county and was there defeated. It is difficult to see that this Beebe case gives any support to the argument of appellant, but on the contrary it rather appears to be an authority in favor of the defendants.

Another case cited is that of U. S. vs. Thompson, 89 U. S. 488. That case decides nothing more than that the statute of limitations cannot bar the United States. It merely re-affirms the familiar rule that time cannot run against the sovereign, but in the present case the real defense is that the matters presented by the complainant have been already adjudicated by a court of competent jurisdiction in a suit brought by the real party in interest, the Pueblo of Laguna, which was competent to bring such suit as shown by the decision in the case of Payne vs. Santa Rosa, 249 U. S. 110.

The next case cited is that of Tiger vs., Western Investment Co., 221 U. S., 286. This was a case involving the validity of conveyances made by Tiger, plaintiff in error, a full blood Indian of the Creek tribe. The conveyances were made without the approval of the Secretary of the Interior, Tiger having inherited the land conveyed from relatives who were also full blooded Creek Indians to whom the lands had been allotted. The act of Congress under which the allotments were made, contained a restriction as to alienation of allotted lands, and the court held that this restriction was valid. Attention is again called to the fact that there is nothing to be found anywhere which makes the Indian Pueblos anything like the tribe of Creek Indians and also that there is nothing in the present case as to any attempt at alienation of lands by the Pueblo.

Another case cited is that of U. S. vs. Moore, 284 Fed., 89, but this was a case involving the rights of a full blood Quapaw

Indian, and was brought to recover from Moore a large sum of money which he had received as royalties upon the assignment by the Indian of a right to royalties under a lease of land which he had given. The court held that under Congressional restrictions the Indian had no right to make the lease and that the government could maintain the action for the recovery of the money and that its interest was not pecuniary but governmental in the discharge of its duty to the Indians, assumed because these Indians were under national tutelage, and Congress had expressly declared that they might not dispose of their lands. It certainly requires a great power of imagination to see how this case applies to the Pueblo of Laguna, as to which no such duty has been assumed and nosu ch express declaration made, by Congress. There is no way by which the Pueblo of Laguna, in the light of the case of Payne vs. Santa Rosa, can be classed with the Quapaw Indians or any other class of Indians. There certainly has been no action by congress in the exercise of its jurisdiction over Pueblo lands, reserved in the enabling act, which puts the Pueblos in a state of tutelage, or in any way interferes with, or impairs the Pueblo title to lands which is a fee simple title (U. S. v. Sandoval, 231 U. S., 48,) or the right of the Pueblo to bring suit to protect its rights.

The enabling act does not go quite so far as is asserted at pages 25-26 of the brief for appellant. It declares in section 2 thereof, that the people of the proposed State should agree to disclaim all right or title to all lands "owned or held by any Indian or Indian tribe, the right or title to which shall have been acquired through or from the United States or any prior sovereignty and that until the title of such Indian or Indian tribes shall have been extinguished the same shall be and remain subject to the disposition and under the absolute jurisdiction and control of the Congress of the United States." Up to the time of the decree in this case, no action had been taken by Congress in the exercise of its jurisdiction and control reserved in the enabling act as above quoted. As long as Congress does not act in this matter the Pue-

blo lands remain subject to the legislation of the Territory and State of New Mexico.

It is quite unthinkable that the Pueblo lands should be left without any protection, or the Pueblos left without any power to bring suit to protect their rights because Congress has reserved to itself absolute jurisdiction over those lands and has never in any way exercised that jurisdiction. Here again the case of ~~Payne~~ Laguna vs. Santa Rosa indicates that, notwithstanding this reservation of jurisdiction by Congress, an Indian Pueblo has authority under the legislation of New Mexico to bring suits to protect its rights to lands, just as that legislation distinctly declares that it may.

Another case cited is that of Coyle vs. Oklahoma, 221 U. S., 559-574. In the Co-operative edition this case is reported under the title of Coyle vs. Smith. This is the celebrated case upholding the power of the legislature of the State to remove its capital from Guthrie to Oklahoma City, notwithstanding a provision in the enabling act that the capital should not be changed previous to 1913, the act of the legislature making the change having been adopted Dec. 7, 1910. There is to be found in the opinion some interesting obiter discussion of the power of Congress, in connection with the admission of new states to the union, but if there is anything therein contained which can be of the slightest assistance in determining the essential question in the present case, I must admit my inability to find it.

The essential question here is as to whether the Pueblo of Laguna had any right to institute a suit in the District Court of Valencia County to obtain the same relief, in substance, which the plaintiff seeks in the present case, and, if it had such right, is not the result in thatcourt *res judicata* and a bar to the present suit? In the light of the opinion in the case of Payne vs. Santa Rosa there can be nodoubt that the Pueblo had the right to bring such a suit, but the suggestion is now made that it had no such right, and that all the proceedings in that suit are void,

because the United States was not in any way made a party. There is much argument made on behalf of appellant to show that the statute of limitations cannot be urged as a defense to any suit brought by the government and that this doctrine is equally applicable to a defense based upon laches or former adjudication. The same line of argument would be equally applicable in the California and Indiana cases hereinbefore cited, where it was decided that judgments against cities or counties constituted an estoppel against the state, and also in the case of U. S. vs. Beebe, 127 U. S. 338, hereinbefore reviewed.

People vs. Smith, 93 Calif. 490
Fourst vs. Huntington, 15 N. E. 337

Another case cited in appellant's brief is that of U. S. vs. Sandoval 231 U. S., 48. In effect all that was decided in that case was that the provision in the enabling act that the laws prohibiting the introduction of liquor into the Indian country also included the Pueblo Indians and their lands, was a valid exercise of power by Congress and that, being a legitimate exercise of power, it did not encroach upon the police power of the state or disturb the principle of equality among the states.

The foregoing review of cases cited by appellant, covers all of them which refer to Indians, and fully justifies the assertion, hereinbefore made, that they relate only to the Wild Indians, none of whom have ever had any such distinct entity as would permit them to bring suit in the courts to protect their rights as the Pueblos can, and therefore those cases throw no light upon the principal matter here to be discussed which is as to whether the former decisions in the Valencia district court and in the United States District Court are res judicata as to what is involved in the present case.

## FOURTH

**Morally and equitably the decision of the district court of Valencia County deprived the Indians of nothing to which they are entitled.**

This is a matter somewhat aside from the main question as

to the effect of that decision as res judicata of the matters presented in the present case, but there is so much sentimental bosh about the wrongs done to the Indians,—much of which is unfounded, as in this case of Laguna,—that it is some satisfaction to demonstrate that no injury has been done to the aborigines.

As an exhibit attached to and made a part of the bill of complaint, is a copy of the patent to the Pueblo of Laguna for the land known as the Paguate Purchase which is the subject of the present suit, and in that patent, the copy of which begins on page 9 of the record, is embodied the opinion of the Surveyor General of New Mexico which was the foundation of the confirmation by Congress of the claim for said land, and in that opinion, at page 10 of the record, as a part of the record of the title which the Surveyor General approved, appears the following:—

> "Document B purports to be a statement made by Eusebio Aragon to the effect that he was a witness to the establishment of certain boundaries of the Paguate Rancho by Ignacio Sanchez Vergara, Protector of the Indians, in 1820, which boundaries had been omitted in the deed made in 1769."

The above quoted paragraph appears at page 166 of the House of Representatives Executive Document No. 14 of the 1st Session of the 30th Congress, to which reference is made for a clear understanding of the language quoted. A translation of said document B appears on pages 159-160 of the same Congressional Document, and reads as follows, slightly disfigured by some typographical errors:

GRANT NO. 2.— TRANSLATION.

> "In this year one thousand eight hundred and twenty, Don Ignacio Sanchez Vergara, protector general of the Indians of this province of New Mexico, executed a document alike to the instrument authorized by Don Antonio Tedillo, in the year one thousand seven hundred and sixty-nine; and for not stating three boundaries which said protector did not mention in his document, the par-

ties mentioned in said document requested me to make a copy thereof, stating the boundaries to which the rancho of Paguate is entitled, which document is of the tenor following:

For this Pueblo of Jemes, on the 1st day of June, in the year one thousand eight hundred and twenty, a document authorized by the former Alcalde of the Pueblo of Laguna was presented to me by Lorenzo and Alonzo Santiago, Alonzo the second, Torribio and Rita, native Indians of said Pueblo, requesting me to take charge of the interests they represented in the rancho called Pagnasti; and having registered it, I find that Don Antonio Sedillo, the said alcalde at that time, took cognizance of a suit brought by Juan Pagnasti and Pascual Pajarito, both residents of said Pueblo, and it was ordered that each one should quietly remain upon his own property, without disturbing each other.

Such being the case, and as protector of the Indians for the royal audience of Guadalajara, to whom alone it is proper for the Indians to refer matters of a common or a private nature if they are in any way aggrieved, or if they have not sufficient amount of land with what the laws allows them, or that they may have legally acquired, and by virtue of the ancient possession of said land to which the said natives refer, called the rancho of Pagnasti, acquired by a legal title, and that the new settlement of Cebolleta, granted by Governor Don Fernando Chacon to certain citizens, and possession given by the alcalde Don Jose Manuel Aragon, with the formalities required by the laws of possession and settlement, the boundaries having been marked out. The aforesaid ranch and its boundaries in the direction of Cebolleta remained free with its ancient appurtenances as far as the table-land of El Gabilan, on the south to La Cuesta, and on the west to the Rito de San Jose, and on the east to the Cañoncito del Cajo.

The new settlers of Cebolleta were satisfied with their boundaries at the table-land of El Gabilan, adjoining the holders in good faith.

The want of land by these Indians is to be taken in consideration, and that the tract of Pagnasti is the only one in a measure aids them with a scant produce in their misery; and although at the commencement they had more land extending as far as El Rito, they were restricted by Don Juaquin Pino to a tract of waste land, he having deprived them of the said land by virtue of a right to it held by his late father, whom he represents, but which land had been abandoned for more than thirty years. Nevertheless, his title was recognized, and they are so much reduced that the only aid they received is from Pagnasti, where the principal owners cultivate the soil in common with the Pueblo, and those who have no lands to cultivate for their support are in a measure relieved.

All of which has been well premeditated and considered, and will be shown whenever an effort is made to injure them by depriving them of the ancient possession of Pagnasti. There is no doubt that, presenting themselves in person or through their protector to the Superior Audience, they will be allowed to remain in peace, in the enjoyment of what is unquestionably theirs. In testimony whereof, and in compliance with the duties so repeatedly enjoined upon me by the royal laws of the recopilation of the Indies, I executed this document for their protection, as protector of the Indians who are so highly recommended to me by the attorney, protector general of the Indians, and for its due authenticity I signed on the said day, month, and year.

I signed this as a witness to the truth of the statement made by the protector.

Santa Fe, August 28, 1826. Eusebio Aragon.

It will be seen that this statement of Eusebio Aragon, as protector of the Indians, distinctly declares that the northern boundary of the Paguate Rancho was the table-land of el Gabilan, which is, in Spanish, la mesa del gabilan, or the mesa of the hawk,

with which "The new settlers of Cebolleta were satisfied." It would seem that those settlers and the Indians were in attendence and must have agreed to what was done. Moreover, the Mesa del Gabilan was a south boundary call of the Cebolleta Grant as stated in paragraph 4 of the answer on page 24 of the record, that grant being that under which appellees claim.

Wherefore it cannot be doubted that the Mesa del Gabilan was in 1820 the dividing point between the Cebolleta Grant and the Paguate Purchase, and was so recognized by the adjoining owners, and as the confirmation by Congress "shall only be construed as quit-claims or relinquishments on the part of the United States and shall not affect the adverse rights of any other person or persons whomsoever" (Record, page 20), that Mesa must be the proper boundary today.

Now, the district court of Valencia county, (Record, page 36) made the following finding of fact:—

> "The Court further finds that the Mesa del Gabilan, which is one of the calls for the south boundary of the Cebolleta Grant, lies to a considerable distance southeast of the Indian town called Paguate, and that the junction of the Cañada of the Zia Road and the Cañada de Pedro Padilla, which is the other call for said southern boundary for said Cebolleta Grant, lies directly east from said Mesa del Gabilan, the line through said Mesa and the point of junction of the said Cañadas being the true boundary line of the Cebolleta Grant being a part of the tract of land described and set forth in the complaint in this case."

But the appellant contends, as appears from some of its erroneous assignments of error, which will be hereafter discussed, that the erroneous survey of that boundary is of such sacred and conclusive character as to be binding on the whole world, although it would deprive the Cebolleta owners of their land without due process of law.

It may be conceded that there are authorities to support this doctrine, shocking as it may be to our sense of justice; but that is something outside of the scope of the contention now made here, which is limited to an attempt to show that honestly and equitably the Indians are not losing anything to which they are morally entitled. Their boundary was fixed by proper authority over a hundred years ago, with their concurrence, and when we consider the customs of such people as these Indians, we can have no doubt that among them knowledge of that boundary has been actually preserved, so that they know what their rights really are, within which they have acted until this litigation began in 1910, which was probably not actually initiated by them but by the unscrupulous office of Indian affairs.

**FIFTH**

**Some of Appellant's Assignments of Error, are inaccurate, misleading and unfair to the Court below.**

The first assignment (Record page 43) is that the court erred in holding and finding that the judgment of the Valencia county district court was not inconsistent with the guardianship relation sustained by the United States over its wards, the Indians of the Pueblo of Laguna.

The court did not so hold, which would have appeared to be a recognition of the existence of such a guardianship relation; but actually did hold (Record, page 42), "that the statute giving power to Pueblos to bring suit in their own names, is not inconsistent with guardianship of any kind, of the Indians by the government."

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The second assignment of error, (Record, page 43) is, abbreviated, that the court erred in holding that any suit brought by the Pueblo was not inconsistent with the guardianship relation of the United States.

The court did not so hold, and the above statement as to the first assignment is equally applicable to this one.

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The fourth assignment of error (Record, page 43,) is that the court erred in holding that the judgment of the district court for Valencia county had jurisdiction of the subject matter of said suit and of the parties thereto and that its judgment therein was a final and complete adjudication of the matter presented in that suit.

What the court held (Record, page 42.) was that the district court of Valencia county was a court of general, unlimited jurisdiction and had jurisdiction of the subject matter and of the parties in the said suit instituted in said court by the Pueblo of Laguna in 1910, and that its decree therein was a final adjudication of the matters presented in that suit and binding on the parties thereto, and was a complete adjudication of the matters presented by the bill of complaint in the present suit, and operates as a bar to the prosecution of this case," which was a logical and necessary holding in view of the previously cited authoritative and controlling decision in the case of Lane vs. Santa Rosa, 249 U. S., 110.

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The sixth assignment of error (Record, page 44,) is that the court erred in holding that the district court for Valencia county had jurisdiction for the entering of a decree setting aside and holding for naught a survey made by the United States of a confirmed Spanish or Mexican land grant, and that such a decree could be binding upon or conclusive against the United States.

The court did not so hold, and nothing of the sort can be found in its judgment on pages 41 and 42 of the Record which sets out all that the court did, nor did the district court of Valencia county enter any such decree as is described in said sixth assignment, as will be seen by reference to pages 33 to 38 of the record. That court, in the 7th and 8th subdivision of its judgment, (Record, page 36) found as a fact, the error in the survey merely as matter preliminary to its 9th finding of the possession by defendants, from a period beyond the memory of any living man, of the land between the true line and the surveyed line of the Cebolleta grant, and as a foundation for such possession and

explanatory of it, which operated as a bar under the statute of limitations.

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The 7th assignment of error is that the court erred in holding that the district court of Valencia county had jurisdiction to set aside the survey of the south boundary of the Cebolleta grant and the north boundary of the Paguate Purchase.

The court made no such holding (Record, page 41 and 42), nor did the Valencia county district do any such thing as is described in said 7th assignment (Record, pages 36 to 38.)

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The 8th assignment of error is that the court erred in holding that it was not essential to the final decree of the district court of Valencia county that it should attempt to correct and alter the boundaries of the Cebolleta grant and Paguate Purchase as established by official survey.

The court did not make any such holding (Record, page 41 and 42), but it is true that it was not essential to the judgment of the Valencia county district court that it should attempt to alter the boundaries as established by official survey, nor did it make such attempt, as hereinbefore shown in the criticism of the sixth assignment of error.

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The 9th assignment of error is that the court erred in holding that the United States cannot maintain this suit for the reason that it has no sufficient interest in the subject matter thereof.

The court did not so hold (Record, page 41 and 42,) but merely held, in substance, that the prosecution of this case was barred by former adjudications of all matters presented by the bill of complaint herein.

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It is respectfully submitted that no error is to be found in the proceedings and judgment of the court below, and that the judgment of the court below should be affirmed.

FRANK W. CLANCY,
Solicitor and Counsel for Appellees.

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# BRIEF FOR APPELLEES

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1925

No. 208

UNITED STATES OF AMERICA

vs.

JOSE CANDELARIA ET AL.

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

## STATEMENT AS TO ERRORS IN RECORD

There are some inaccuracies in the record, which is, of course, only the certificate of the Circuit Court of Appeals, which, from my point of view, are misleading and confusing and ought to be corrected, and to which I have called the attention of he Solicitor General, and have from his office a letter dated September 12, the purport of which will be hereinafter stated. This is preliminary to a discussion of the record and is necessary to an understanding of what is to be considered. The inaccuracies are five in number, and are as follows:—

First, in line 20 of page 3 of the printed record, the first word in the line should be "southern instead of southeast."

Second, in lines 23 and 24 of said page 3, the word should be "southern" instead of "southeast."

Third, in line 30 of said page 3, the word should be "northern" instead of "northeast".

Fourth, in line 32 of said page 3, the word should be "northern" instead of "northeast."

Fifth, the paragraph near the top of page 4, in lines 3 to 7, entirely misstates the holding of the District Court of Valencia Coun-

ty, New Mexico, as stated in the answer, as that court did not hold that a conflict existed between the southern boundary line of the Cebolleta Grant as surveyed and the northern boundary line of the "Paguate Purchase", constituting an overlap to which those claiming under the Cebolleta Grant had the superior title", nor did the answer of the defendants, now appellees, which the said Circuit Court of Appeals on pages 2 to 4 of its certificate, purports to set forth, contain anything to justify the statement in said paragraph, as said answer, and as appellees now assert to be the fact, stated in effect that the holding of the District Court of Valencia County, was, that the Mesa del Gabilan was one of the south boundary calls of the Cebolleta grant and was the north boundary call of the "Paguate Purchase"; that the surveyed line of those tracts was far to the north of the said Mesa del Gabilan, and that the land between the south boundary of the surveyed line of the Cebolleta Grant and the true south boundary of the Cebolleta grant at the Mesa del Gabilan, running thence east to the point of the junction of the Cañada of the Zia road, and the Cañada de Pedro Padilla, which is the other call for the southern boundary of said Cebolleta grant, and the line through said Mesa and the point of the junction of the said Cañadas, has been from a time beyond memory of any living man, in the open, notorious and exclusive possession of the defendants and their ancestors and predecessors in title, which is quite different from what is set up by the Circuit Court of Appeals in the said paragraph near the top of the page 4 aforesaid, and the answer did not state that the Valencia County District Court held that, as to said land, those claiming under the Cebolleta grant had the superior title.

After presenting the foregoing errors, as I alleged them to be, to the Solicitor General, with some discussion as to the proper method of making corrections, I received the letter hereinbefore referred to, of September 12, 1925, which was from Alfred A. Wheat, Acting Solicitor General, in which he said that he agreed with me that the record is in error in the particulars which I specified as items first to fourth, but that it seemed to him that they were immaterial, and that he could not see that they would in any

way affect the questions presented by the certificate, and that, as to item fifth, it appeared to him that it was merely the Circuit Court of Appeals' construction of what the state or territorial Court had held in the previous suit. He further said that, at the time of the argument, he would be perfectly willing to agree orally that the record does contain these errors which I designated in items first to fourth; and that, as to the matter designated fifth, he thought that was a subject which I could argue to the court. I will, therefore, on paper say no more as to the items first to fourth. I assume that the concession made as to those four items, is based upon the comparison of my suggestions with the printed record used in the Circuit of Appeals, which I asked the Solicitor General, in a letter of August 31, 1925, to cause to be made, as in no other way could the errors be discovered. I may say here that I received the record on August 28.

As to the fifth item, an examination of the printed record will show that from the beginning of the paragraph near the foot of page 2 to the end of the paragraph just above the figure 6 on page 4, the Circuit Court of Appeals attempted to set forth what was pleaded in the answer of defendants, so that the correction suggested in said fifth item is in form correctly stated, as the paragraph on page four to which objection is made, is part of the attempt to set forth the answer of defendants: but even if it is not, and is, as suggested by the Acting Solicitor General, merely the court's "construction of what the state or territorial court had held in the previous suit," it is equally erroneous, as the state court never held anything like what that paragraph sets forth, and I call upon the Solicitor General, in the interest of fair play and a proper presentation of the case, to make the same sort of examination of this item and a comparison of it with the record in the Circuit Court of Appeals which he must have made as to the other items, and to state to this court the result. He will find that the correction suggested in my fifth item is well founded, whether it be limited to what is set forth in defendant's answer, or extended to what was actually held by the state court, and I call his attention to the allegations of the answer onpages 21 and 22 of that record, and to that part of the judgment of the state court which relates to that part

of the controversy which is the subject of the present suit, which will be found on pages 36-37 and pages 37-8 of that record.

## POINTS AND AUTHORITIES

### FIRST

*The former adjudications in the state court and in the United States District Court, mentioned in Question I, bar the present suit.*

The real question here to be considered, is as to the right of the Pueblo of Laguna to bring a suit concerning its claimed ownership of land. The answer to this is clearly given by the opinion in the case of Lane v. Santa Rosa 249 U. S., 110, 112.

In that case, the court very clearly shows, first, that historically the status of these Pueblos, under Spain and Mexico, was such as to enable them to become suitors for the purpose of enforcing or defending their property interests; and, second, that there is another ground, arising out of our own laws, which is in itself sufficient. If the Pueblo has power to bring a suit it is absurd to say that the decision of that suit is a nullity if the United States is not a party as is now contended by the government. If that were sound, a Pueblo, with its right to bring a suit, declared unmistakably by this court, could gain nothing even if successful. Clearly, if the Pueblo has power to sue, it must be bound by the result as must be its adversary.

By the somewhat meagre statement in the certificate upon which this case is to be heard, it appears that the suit is brought to obtain "a judicial determination of the title of the Pueblo of Laguna to the tract or grant of land set out and described in the bill of complaint:" and also that the suit in the state court was for the purpose of quieting theIndian Title to the land described in the bill of complaint.

It is clear that the subject-matter of the suits is the same and the relief sought is the same, which is to quiet the title to the land in the Pueblo of Laguna. It is now argued that, while the Pueblo had a right to bring its suit, and its interest which entitled it to

maintain the two previous suits, was its property interest derived from the title by patent from the United States, yet the results of the previous suits cannot bar the United States in the present case because the interests of the United States and of the Pueblo are different and distinct, and there can be no privity between them.

I find it difficult to understand the distinction, but it would seem that the contention must be that the interest of the Pueblo which justified the bringing of its suits in its own name, was its claimed interest in the same land which is the subject matter of this, the third suit, as to the claimed interest of the Pueblo, while the interest of the United States is in the discharge of its assumed duty to protect the rights of the Pueblo of Laguna and that this interest is different from the interest of the Pueblo.

With all due respect for the learned counsel who represent the government it seems clear to me that, as applied to this case, this is a distinction without a difference, and is based upon the mere words by which counsel undertake to state their conception of the duty of the United States to the Indians, and upon nothing else. The conceded fact remains that the state court had jurisdiction to enter its judgment, but it is contended that the United States is not affected by the judgment and now must be allowed to re-litigate, in this suit, the same matters which were considered and passed upon by the state court acting within its undoubted jurisdiction.

No case can be found to which can be better applied the doctrine of *"interest republicae ut sit finis litium,"*

The duty of the United States, if there is any, to the Pueblo of Laguna, is to protect the claimed right of the Pueblo to land in the Paguate Purchase, and its interest is as to the Pueblo's right to that land, which is identical with what was litigated by the Pueblo in the state court, within its jurisdiction as complainant concedes at pages 6 and 23-4 of its brief.

As to the question of the binding effect of the former judgment on the right to prosecute the present case, there are authorities which will be found interesting to say the least. They are cited in the brief of appellees in the Circuit Court of Appeals, copies of

which I filed in the present case as a brief for them, as soon as I knew of the certificate of the Circuit Court of Appeals, believing that it would be sufficient to present their contentions herein and would perhaps avoid some expense to my long-suffering and poverty-stricken clients. Upon that brief, however, I still rely and ask the attention of the court thereto, but will not here attempt to reproduce it in full. The cases are the following:

*People v. Smith*, 93 *Calif.*, 490, 29 *Pac.* 57.
*People v. Beaudry*, 27 *Pac.*, 610.
*Foust v. Huntington*, 15 *N. E.*, 337.
*Lichty v. Lewis*, 63 *Fed.*, 535, 536.
*Featherson v. Turnpike Co.*, 24 *N. Y. S.*, 603, 604-5.
*Palmer v. Ins. Co.*, 30 *N. Y. S.*, 1044, 1049.
*Tausiede v. Jumel*, 30 *N. E.*, 1000.
*Carmody v. Hanick*, 85 *Mo. App.*, 659-60.
*M'Mullen v. Brown*, 2 *Hill Ch.* 457, 460.

In the above cited case of Carmody v. Hanick, the syllabus distinctly states a correct rule, as follows:—

> "Where the interests of parties in the prosecution of a suit are mutual although the suit is in the name of one of the parties, both are represented and both are equally estopped to deny any of the issues adjudicated therein in any suit between them jointly or singly on the one side and the same defendant on the other side."

I submit to the court that the interest of the Pueblo of Laguna and the interest of the United States in the subject matter of these suits, are identical, and the effort to distinguish between them, may properly, without discourtesy, be characterized as but little, if any, better than camouflage

The effort of complainant's counsel at page 12 of their brief, to minify the holding of this court in *Lane vs. Pueblo of Santa Rosa*, 249 *U. S.* 110 is hardly creditable. It is there stated that what was decided in that case, was that the Pueblo of Santa Rosa had capacity to institute and maintain an action to protect its lands from unauthoried encroachments of executive officers. An examination of

the opinion, at page 112, will show that the holding goes much further, and, in effect, declares that all these Indian Pueblos, as bodies corporate, are "capable of suing or defending in respect" of their lands. If capable of suing, the adjudication of their claims, followed by an adverse decision, must be a finality and a bar against the reassertion of those claims against the same defendants, whether such reassertion is by themselves or by any other assuming to act for them.

**SECOND**

*This court has decided that it has no jurisdiction of this controversy.*

The second of the cases begun by the Pueblo of Laguna was brought to this court by appeal and dismissed for want of jurisdiction.

*Pueblo of Laguna v. Candelaria et al.*, 257 U. S. 623.

It being clearly established by the decision in *Lane v. Santa Rosa*, 249 U. S. 110 112, that the Pueblo has capacity to sue, an adverse decision is conclusive as to all matters adjudicated in such a suit or which might properly be adjudicated therein.

I do not ignore the distinction sought to be made by opposing counsel, which has been already hereinbefore sufficiently considered, and this second point is made to reinforce the applicability of the maxim that the interest of the public requires that there be an end to litigation .

It is respectfully submitted that the first question by the Circuit Court of Appeals must be answered in the negative and the second question must be answered in the affirmative, so far at least as it applies to this case, where it appears that the judgment of the state Court may have been, and probably was, based upon immemorial possession and not upon any disregard of a survey made by the United States. However, this question is as to the jurisdiction of the state court and should not be extended to whether its judgment was right or wrong.

FRANK W. CLANCY,
Counsel for Appellees.

# SUPREME COURT OF THE UNITED STATES.

No. 208.—October Term, 1925.

The United States of America, vs. Jose Candelaria, et al. } On Certificate from the United States Circuit Court of Appeals for the Eighth Circuit.

[June 1, 1926.]

Mr. Justice Van Devanter delivered the opinion of the Court.

In 1922 the United States brought a suit in the federal district court for New Mexico against Jose Candelaria and others to quiet in the Indian Pueblo of Laguna the title to certain lands alleged to belong to the pueblo in virtue of a grant from Spain, its recognition by Mexico and a confirmation and patent by the United States. The suit was brought on the theory that these Indians are wards of the United States and that it therefore has authority and is under a duty to protect them in the ownership and enjoyment of their lands. The defendants were alleged to be asserting a false claim to the lands and to be occupying and fencing the same to the exclusion of the Indians. In their answer the defendants denied the wardship of the United States and also set up in bar two decrees rendered in prior suits brought against them by the pueblo to quiet the title to the same lands. One suit was described as begun in 1910 in the territorial court and transferred when New Mexico became a State to the succeeding state court, where on final hearing a decree was given for the defendants on the merits. The other was described as brought in 1916 in the federal district court and resulting in a decree of dismissal on the grounds that the complaint disclosed that the matters presented "were res judicata and that there was no federal question in the case." In the replication the United States alleged that it was not a party to either of the prior suits; that it neither authorized the bringing of them nor was represented by the attorney who appeared for the pueblo; and therefore that it was not bound by the decrees.

On the case thus presented the court held that the decrees operated to bar the prosecution of the present suit by the United States,

and on that ground the bill was dismissed. An appeal was taken to the Circuit Court of Appeals, which after outlining the case as just stated, has certified to this Court the following questions:

1. Are Pueblo Indians in New Mexico in such status of tutelage as to their lands in that State that the United States, as such guardian, is not barred either by a judgment in a suit involving title to such lands begun in the territorial court and passing to judgment after statehood or by a judgment in a similar action in the United States District Court for the District of New Mexico, where, in each of said actions, the United States was not a party nor was the attorney representing such Indians therein authorized so to do by the United States?

2. Did the state court of New Mexico have jurisdiction to enter a judgment which would be *res judicata* as to the United States, in an action between Pueblo Indians and opposed claimants concerning title to land, where the result of that judgment would be to disregard a survey made by the United States of a Spanish or Mexican grant pursuant to an act of Congress confirming such grant to said Pueblo Indians?

The status of the Pueblo Indians and their lands, and the relation of the United States to both, were considered in *United States* v. *Sandoval*, 231 U. S. 28. We there said (pp. 45-47):

"Not only does the Constitution expressly authorize Congress to regulate commerce with the Indian tribes, but long continued legislative and executive usage and an unbroken current of judicial decisions have attributed to the United States as a superior and civilized nation the power and the duty of exercising a fostering care and protection over all dependent Indian communities within its borders, whether within its original territory or territory subsequently acquired, and whether within or without the limits of a State. . . . 'It is for that body [Congress] and not for the courts, to determine when the true interests of the Indian require his release from such condition of tutelage.'

"Of course, it is not meant by this that Congress may bring a community or body of people within the range of this power by arbitrarily calling them an Indian tribe, but only that in respect of distinctly Indian communities the questions whether, to what extent, and for what time they shall be recognized and dealt with as dependent tribes requiring the guardianship and protection of the United States are to be determined by Congress and not by the courts.

"As before indicated, by a uniform course of action beginning as early as 1854 and continued up to the present time, the legislative and executive branches of the Government have regarded

and treated the Pueblos of New Mexico as dependent communities entitled to its aid and protection, like other Indian tribes; and, considering their Indian lineage, isolated and communal life, primitive customs and limited civilization, this assertion of guardianship over them cannot be said to be arbitrary but must be regarded as both authorized and controlling."

And also (p. 48): "We are not unmindful that in United States *v.* Joseph, 94 U. S. 614, there are some observations not in accord with what is here said of these Indians, but as that case did not turn upon the power of Congress over them or their property, but upon the interpretation and purpose of a statute not nearly so comprehensive as the legislation now before us, and as the observations there made respecting the Pueblos were evidently based upon statements in the opinion of the territorial court, then under review, which are at variance with other recognized sources of information, now available, and with the long continued action of the legislative and executive departments, that case cannot be regarded as holding that these Indians or their lands are beyond the range of Congressional power under the Constitution."

While we recognized in that case that the Indians of each pueblo, collectively as a community, have a fee simple title to the lands of the pueblo (other than such as are occupied under executive orders), we held that their lands, like the tribal lands of other Indians owned in fee under patents from the United States, are "subject to the legislation of Congress enacted in the exercise of the Government's guardianship" over Indian tribes and their property.

The purpose of Congress to subject the Pueblo Indians and their lands to that legislation, if not made certain before the decision in the *Joseph* case, was made so in various ways thereafter. Two manifestations of it are significant. A decision of the territorial court in 1904 holding their lands taxable, 12 N. M. 139, was promptly followed by a congressional enactment annulling the taxes already levied and forbidding further levies, c. 1479, 33 Stat. 1069; and a decision of that court in 1907 construing the statute which prohibits the sale of liquor to Indians and its introduction into the Indian country as not including these Indians or their lands, 14 N. M. 1, was shortly followed by an enactment declaring that the statute should be construed as including both, c. 310, 36 Stat. 560. It also is of significance that in 1898 Congress provided for the employment by the Secretary of the Interior of a special attorney to represent the Pueblo Indians and protect their interests, c. 545, 30 Stat. 594, and that from that

time to this a special attorney has been so employed and has been paid out of appropriations made by Congress for the purpose, c. 42, 42 Stat. 1194.

Many provisions have been enacted by Congress—some general and others special—to prevent the Government's Indian wards from improvidently disposing of their lands and becoming homeless public charges. One of these provisions, now embodied in section 2116 of the Revised Statutes, declares: "No purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution." This provision was originally adopted in 1834, c. 161, sec. 12, 4 Stat. 730, and, with others "regulating trade and intercourse with the Indian tribes," was extended over "the Indian tribes" of New Mexico in 1851, c. 14, sec. 7, 9 Stat. 587.

While there is no express reference in the provision to Pueblo Indians, we think it must be taken as including them. They are plainly within its spirit and, in our opinion, fairly within its words, "any tribe of Indians." Although sedentary, industrious and disposed to peace, they are Indians in race, customs and domestic government, always have lived in isolated communities, and are a simple, uninformed people, ill-prepared to cope with the intelligence and greed of other races. It therefore is difficult to believe that Congress in 1851 was not intending to protect them, but only the nomadic and savage Indians then living in New Mexico. A more reasonable view is that the term "Indian tribe" was used in the acts of 1834 and 1851 in the sense of "a body of Indians of the same or a similar race, united in a community under one leadership or government, and inhabiting a particular though sometimes ill-defined territory." *Montoya* v. *United States*, 180 U. S. 261, 266. In that sense the term easily includes Pueblo Indians.

Under the Spanish law Pueblo Indians, although having full title to their lands, were regarded as in a state of tutelage and could alienate their lands only under governmental supervision. See *Chouteau* v. *Molony*, 16 How. 203, 237. Text writers have differed about the situation under the Mexican law; but in *United States* v. *Pico*, 5 Wall. 526, 540, this Court, speaking through Mr. Justice Field, who was specially informed on the subject, expressly

recognized that under the laws of Mexico the government "extended a special guardianship" over Indian pueblos and that a conveyance of pueblo lands to be effective must be made "under the supervision and with the approval" of designated authorities. And this was the ruling in *Sunol* v. *Hepburn*, 1 Cal. 254, 274, *et seq.* Thus it appears that Congress in imposing a restriction on the alienation of these lands, as we think it did, was but continuing a policy which prior governments had deemed essential to the protection of such Indians.

It was settled in *Lane* v. *Pueblo of Santa Rosa*, 249 U. S. 110, that under territorial laws enacted with congressional sanction each pueblo in New Mexico—meaning the Indians comprising the community—became a juristic person and enabled to sue and defend in respect of its lands. But in that case there was no occasion and no attempt to determine whether or to what extent the United States would be bound by the outcome of such a litigation where it was not a party. That was a suit brought by the Pueblo of Santa Rosa to enjoin the Secretary of the Interior and the Commissioner of the General Land Office from carrying out what was alleged to be an unauthorized purpose and attempt to dispose of the Pueblo's lands as public lands of the United States. Arizona was formed from part of New Mexico and when in that way the pueblo came to be in the new territory it retained its juristic status. Beyond establishing that status and recognizing that the wardship of the Indians was not an obstacle to the suit the case is without bearing here. In the opinion it was said: "The Indians are not here seeking to establish any power or capacity in themselves to dispose of the lands, but only to prevent a threatened disposal by administrative officers in disregard of their full ownership. Of their capacity to maintain such a suit, we entertain no doubt. The existing wardship is not an obstacle, as is shown by repeated decisions of this Court, of which *Lone Wolf* v. *Hitchcock*, 187 U. S. 553, is an illustration."

With this explanation of the status of the Pueblo Indians and their lands, and of the relation of the United States to both, we come to answer the questions propounded in the certificate.

To the first question we answer that the United States is not barred. Our reasons will be stated. The Indians of the pueblo are wards of the United States and hold their lands subject to the restriction that the same cannot be alienated in any-wise without

its consent. A judgment or decree which operates directly or indirectly to transfer the lands from the Indians, where the United States has not authorized or appeared in the suit, infringes that restriction. The United States has an interest in maintaining and enforcing the restriction which cannot be affected by such a judgment or decree. This Court has said in dealing with a like situation: "It necessarily follows that, as a transfer of the allotted lands contrary to the inhibition of Congress would be a violation of the governmental rights of the United States arising from its obligation to a dependent people, no stipulations, contracts, or judgments rendered in suits to which the Government is a stranger, can affect its interest. The authority of the United States to enforce the restraint lawfully created cannot be impaired by any action without its consent." *Bowling and Miami Improvement Co.* v. *United States*, 233 U. S. 528, 534. And that ruling has been recognized and given effect in other cases. *Privett* v. *United States*, 256 U. S. 201, 204; *Sunderland* v. *United States*, 266 U. S. 226, 232.

But, as it appears that for many years the United States has employed and paid a special attorney to represent the Pueblo Indians and look after their interests, our answer is made with the qualification that, if the decree was rendered in a suit begun and prosecuted by the special attorney so employed and paid, we think the United States is as effectually concluded as if it were a party to the suit. *Souffront* v. *Compagnie des Sucreries*, 217 U. S. 475, 486; *Lovejoy* v. *Murray*, 3 Wall. 1, 18; *Claflin* v. *Fletcher*, 7 Fed. 851, 852; *Maloy* v. *Duden*, 86 Fed. 402, 404; *James* v. *Germania Iron Co.*, 107 Fed. 597, 613.

Coming to the second question, we eliminate so much of it as refers to a possible disregard of a survey made by the United States, for that would have no bearing on the court's jurisdiction or the binding effect of the judgment or decree, but would present only a question of whether error was committed in the course of exercising jurisdiction. With that eliminated, our answer to the question is that the state court had jurisdiction to entertain the suit and proceed to judgment or decree. Whether the outcome would be conclusive on the United States is sufficiently shown by our answer to the first question.

*Questions answered as stated in this opinion.*